

MINUTES

of the

COUNCIL OF THE COUNTY OF MAUI

May 6, 2016

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON FRIDAY, MAY 6, 2016, BEGINNING AT 9:03 A.M., WITH CHAIR MICHAEL B. WHITE PRESIDING.

CHAIR WHITE: This meeting of the Council of the County of Maui shall please come to order.

Mr. Clerk, will you please call the roll.

ROLL CALL

PRESENT: COUNCILMEMBERS GLADYS C. BAISA, ROBERT CARROLL, ELEANORA COCHRAN, DONALD G. COUCH JR., S. STACY CRIVELLO, G. RIKI HOKAMA, VICE-CHAIR DONALD S. GUZMAN, AND CHAIR MICHAEL B. WHITE.

EXCUSED: COUNCILMEMBER MICHAEL P. VICTORINO.

COUNTY CLERK DENNIS A. MATEO: Mr. Chair, eight Members are present, one excused. A quorum is present to conduct the business of the Council.

CHAIR WHITE: Thank you, Mr. Clerk.

And for opening remarks this morning, we have Vice-Chair Don Guzman.

OPENING REMARKS

The opening remarks were offered by Vice-Chair Donald S. Guzman.

CHAIR WHITE: Very good. Thank you, Vice-Chair.

Will you all please rise and, and recite the Pledge of Allegiance with me.

PLEDGE OF ALLEGIANCE

The Members of the Council, and others in attendance, rose and recited the Pledge of Allegiance.

CHAIR WHITE: Thank you. And may I please ask that all of your cellphones be placed on vibrate during the meeting?

Mr. Clerk, let's proceed.

COUNTY CLERK: Mr. Chair, proceeding with the presentation of testimony on agenda items. We have established limited telephone interactive communication that enables individuals from Hana, Lanai, and Molokai, to provide testimony from our District Offices.

Individuals who wish to offer testimony should now sign up at, with the District Office staff. Individuals who wish to offer testimony in the chamber, please sign up at the desk located in the eighth floor lobby just outside the chamber door. Testimony at all locations is limited to the items listed on today's agenda.

And pursuant to the Rules of the Council, each testifier is allowed to testify for up to three minutes with one minute to conclude if requested. And when testifying, please state your name and the name of any organization you represent.

Hana Office, please identify yourself and introduce your first testifier.

MS. DAWN LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

COUNTY CLERK: Thank you.

Lanai Office, please identify yourself and introduce your first testifier.

MS. DENISE FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

COUNTY CLERK: Thank you.

Molokai Office, please identify yourself and introduce your first testifier.

MS. ELLA ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

COUNTY CLERK: Thank you.

Mr. Chair, we have two individuals who have signed up to provide testimony in the Council chamber. The first person to provide testimony this morning is Kauai Kahaialii, Chair, the Royal Order of Kamehameha, to be followed by Richard DeLeon.

PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. KAUI KAHAIALII [testifying on Bill No. 38 (2016)]:

Aloha kakahiaka, Chair, Councilmembers. Mahalo, mahalo. My name is Kauilani Kahaialii. I am a member of the Royal Order of Kamehameha. And, today I am here on, I guess Bill 38.

And basically, on behalf of the Royal Order of Kamehameha, I would like to mahalo this Council. Mahalo for your support, for being with us through this whole huaka'i, this journey of our festivals. And thank you, mahalo, mahalo, mahalo nui.

CHAIR WHITE: Thank you, Mr. Kahaialii.

Members, any need for clarification of the testimony? Seeing none, thank you very much for being here this morning--

MR. KAHAIALII: Thank you.

CHAIR WHITE: --and sharing your mana`o.

Mr. Clerk.

COUNTY CLERK: The next testifier is Richard DeLeon, testifying on Bill 43.

MR. RICHARD DELEON [testifying on Bill 43 (2016)]:

Aloha kakahiaka no kakou, Councilmembers, Mr. Chair--

CHAIR WHITE: Aloha.

MR. DELEON: --the Royal Order. My name is Richard Ma`ele DeLeon; a lineal descendent of the house of Keawe. I'm here to testify on Bill 43. And, what is my concern about 43 is the language. And, sometimes we got to be careful when it becomes to legalities about our language that has been changed; the semantics.

So, what is being changed is, is the wording of how we're going to deal with the violators of the illegal rentals. And, the way that it looks like, I, I'm looking at it from the outside looking in. So, I have a different perspective. So, it's sending a wrong message. It's going to bog down Councilmembers that don't have the facilitators to go after the violators. And, then the result, end result that, it stops revenues which a Councilmember needs.

So, my take is that is, to keep it as it is, but to make a stronger message for those who are violating to make a stiffer fine. Those fines can use to generate revenue that either can open a position that can go after those that's violating which generates revenue for the County, instead of using taxpayers' money. Or it could be used towards off, to offset affordable housing.

Because what's happening is, all these homes that coming up, they're not residents, but the high-end homes. It's going to change the rent which is already skyrocketing in our community of Kihei. It's going to make it much more hard for us to find rent because those rentals are up, skyrocketing. And, it's based on what's around you. So, if this continues to happen, it's going to start making more issues to homelessness if it's, this path continues.

So, I'm asking you to be careful in the, the changing of the semantics and the languages that is used, that's going to favor the violators. Because, it's going to bulk down the bureaucracy that I don't think the Council have time to do so unless, like I said, the fines much stiffer, sends a stronger message to the violators. Thank you very much.

CHAIR WHITE: Thank you, Mr. DeLeon.

Members, any need for clarification? Seeing none, thank you very much for being here this morning.

MR. DELEON: Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Pam Bello, testifying on Bill 43. Pam will be followed by Tom Croly.

MS. PAM BELLO [testifying on Bill No. 43 (2016)]:

Good morning, everyone. Thank you for this opportunity to testify. My name is Pam Bello. I'm the owner and President of Bello Realty, which is in Kihei. We've been in business since 1980, and I'm also a member of the Real Estate Association of Maui and the Maui Vacation Rental Association. And, I've been involved with vacation rentals for almost longer than I'd care to admit, but the late 70's.

As a licensed real estate professional, I would strongly urge passage of the current bill. It is a fair and just bill for property owners who have been in the process. They've been working in good faith, and they need passage of this bill to complete their application process.

The bill, in its current form, requires an applicant to pay any application fees, to be in good standing with the applicable taxes, and to agree to be closed down until their permit is granted. There are, these are applicants who are serious, willing to make the commitment, and want to be in compliance. They should be given the opportunity, and not be turned away or banned.

This bill will also assist with those owners who have been on the sidelines, those that are watching the process and waiting to come forward, and submit their applications. If an applicant is willing to admit they have done vacation rentals in the past, and then when submitting their application, they're automatically banned for telling the truth, this will not encourage these sideliners to come forward. And if banned, it will not stop the banned people from operating and continuing to do business under the radar. Sorry, but that's, that is the truth.

As a vacation rental professional, the internet can be a wonderful tool. It has certainly revolutionized our business. But, it can be false and misleading. Just because a property is listed as a vacation rental on the internet does not mean it is truly an operating vacation rental. This is a really sinister side. Those who post a listing, have a great beachfront estate at a fabulous price with loads of availability, sometimes operate with the full intention of taking someone's money and

disappearing. They do not have anything to do with the property, they're not the owners, the agents; they are scammers.

Then there's the not-so sinister side. The person doesn't care about his business, and maybe didn't, did work as a vacation rental agent years ago. They have a great website, great website, but they may hit the big one maybe in Vegas. They're not working anymore, but their website is still out there even though the properties are not available. So, it looks like the property's for rent, but it's not.

So in summary, looking online to determine if, it's not an accurate or full-proof way to determine if an applicant is currently or has been operating as a vacation rental. I notice from a County agency, such as a warning letter or a notice of non-compliance is the best way I can think of to determine if a property is used as a vacation rental.

CHAIR WHITE: Could you provide a concluding remark please?

MS. BELLO: Okay. This is a good bill. Please pass it in its current form. Mahalo.

CHAIR WHITE: Thank you, Ms. Bello.

Members, any need for clarification? Seeing none, thank you very much.

Mr. Clerk.

COUNTY CLERK: Next testifier Tom Croly, testifying on Bill 43, on behalf of Maui Vacation Rental Association.

MR. TOM CROLY, MAUI VACATION RENTAL ASSOCIATION [testifying on Bill 43 (2016)]:

Aloha, Chair.

CHAIR WHITE: Aloha.

MR. CROLY: Aloha, Council. I'm Tom Croly, on behalf of the Maui Vacation Rental Association. I submitted written testimony, and emailed each of you with it. You got a piece today, and there should have been a piece on, on your paper from, from yesterday.

(Vice-Chair Guzman was excused from the meeting at 9:19 a.m.)

MR. CROLY: I want to start by just saying that no one has done more to help bring a legal industry to, to the table than myself; no one. No one has been in this chambers working with you guys. No one has been out in that field working with, with getting people through the process. I know this, this industry. And, I know, I believe that I know what will help us get to the end goal, which is the only people making this use are the people who have permits.

I urge you to pass the bill in the form that it, that it was amended at, at last, at first reading. And, I say this for a number of reasons. One of the things that I'm pleased about is we now have a bill that is internally consistent, and does not require that an applicant lie in order to make application. I have to be honest with you, 90 percent of the people who have gotten permits to date, have previously been operating. Less than 10 percent of the people who have gotten permits to date were completely, you know, not operating prior to getting their permits.

(Vice-Chair Guzman returned to the meeting at 9:21 a.m.)

MR. CROLY: Expecting that that would end immediately is just unrealistic. However, we've made a very good change in this bill, and that is this form that you codified that says that an applicant must first sign and affirm that they have stopped operating in order to make application. Then, they must admit to any previous application, operation, and pay the taxes accordingly or show that they did pay the taxes at the time of that operation. And then, they must pay a back-permitting fee associated with, you know, a fine, essentially, that you didn't do the right thing. At that point, the, the operator signs, or the applicant signs and says I affirm that everything I'm telling you is true. If it's not, then that permit can be denied and that person can be, you know, denied from, from making application for a period of time.

This is a better way of going about it, rather than saying we found an ad out there that you were operating, so therefore, you can't come in now. I want to get these people in. I want to get them permitted. The bill that's on the table today will help in that, in that way. I can't say that this bill includes all of the things that I would have liked to have seen in it, and all of the things I advocated for. But, life is built with compromise, and this compromise is a reasonable one. And again, I urge you to pass the bill in its current form. Thank you.

CHAIR WHITE: Thank you, Mr. Croly.

Members. Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And, thank you, Tom for being here this morning, and thank you for all the work that you've done with this. I mean, I remember 10 years ago when we started with trying to craft the B&B bill, and it's been a long 10 years and we seem to keep working at this. We got a awful lot of paper from you in the last 24 hours. And, so I want to make sure that I have one thing correct.

This bill was sent to the Planning Commission. What did they do with it, with the amendment? What did they do?

MR. CROLY: Well, the amendment that was made at first reading and, and the four-page testimony that you got today were the minutes from the Planning Committee meeting when the amendment that would say it's a notice of violation that would trigger a, a five-year ban. The Planning Commission affirmed that and said we, we think that that is the right thing to do.

COUNCILMEMBER BAISA: So, they supported the way it is?

MR. CROLY: They supported the way the bill is currently written, yes.

COUNCILMEMBER BAISA: Okay. I just wanted to really be sure that that's what I understood.

MR. CROLY: Yea.

COUNCILMEMBER BAISA: Okay.

MR. CROLY: As, at the time, and the Planning Commission meeting that, that they had was May of 2014, you have the minutes to that meeting, or a portion of the minutes to that meeting. The Planning Director and Joe Alueta, on behalf of the Planning Director, said we want to have clarity that it is only after a notice of violation has been issued, and all appeals have been exhausted that a five-year ban would be applied.

Now, I do understand that the Department changed their position on that in the meantime. But, that position was the Department's position and it was, it was supported by the Planning Commission at the May 2014 meeting.

COUNCILMEMBER BAISA: Okay. Thank you very much.

CHAIR WHITE: Members, any other need for clarification? Seeing none, thank you Mr. Croly.

Mr. Clerk.

COUNTY CLERK: Next testifier is David Dantes, testifying on Bill 43, to be followed by Edic Sliva.

MR. DAVID DANTES [testifying on Bill 43 (2016)]:

Good morning, Chair and Members. I'm Dr. David Dantes, testifying as an individual regarding the second reading of the short-term rental ordinance.

I seldom appear to testify before the entire Council, so I'd like to take a moment to thank you for facing an impossible job. Personally, I know what it's like to have a problem list that grows faster than I can check things off, and to have problems which when I solve one, another thing breaks. But, after you found out that that's the way it is, you stood up and said I'll do it for another term. And, to me that's heroic, so thank you.

I'm here this morning because I'm disappointed about an amendment which was passed at the first reading which inserted language into 16.050.080(E) *[sic]*. The part about a five-year ban is now conditioned on the Department first having issued a notice of violation.

The purpose of the ban is to act as a deterrent, not as a retroactive means of enforcement. It's estimated that more than a thousand illegal short-term rentals open. And, there's no incentive for them not to open without a permit if there are no consequences.

If the five-year ban isn't imposed at the time that a warning is issued, there's no reason why an operator shouldn't just open their business and hope they don't get caught, operate as long as they can. If they do get caught, just apply for a permit like everyone else. In other words, the Department needs to have this disincentive in order to prevent people from opening illegal businesses. That will reduce their workload in trying to chase down and enforce the ones that are already running illegal businesses.

Now, if I were sitting in your seats during the first reading and I heard the presentation of that amendment, that there would be no written notice to people before they were banned, and there would be no recourse through due process, I would have voted for the amendment.

The problem is, and in my written testimony, I stated that the Planning Committee Chair provided misinformation, which persuaded this Committee to accept his amendment. Let me begin by saying I was not and am not implying that that was some intentional deception. By misinformation, I mean statements of fact that are not correct. What's not correct about them? Essentially, the statements were that a banned person doesn't get written notice and they don't have due process. In order to insert due process, you need to have a notice of violation.

But, at the December 3, 2015 Planning Committee meeting, Member Guzman and others carefully questioned the Deputy Planning Director. And, on record, she said that the Department now has established a system where everyone will get written notification, formal notification of a ban. If they want to contest it, they can appeal directly to the Department. If they can show that they haven't been responsible for an advertisement, they're excused from the ban. And, otherwise, they have access to the Board of Variances and Appeals.

In summary, please reverse that amendment that was done at the first reading. Thank you.

CHAIR WHITE: Thank you, Mr. Dantes.

Members, need for clarification?

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And, thank you Mr. Dantes for your testimony.

I heard you say something in there that you were okay with it at a notice of warning time? The ban being done at notice of warning?

MR. DANTES: There are two ways that a ban is applied right now. Most of the time it's applied as part of a notice of warning. And, when the notice of warning includes a ban, that is an order which can be appealed. But, there are other times when it isn't applied as a, as a part of the notice of warning. And that is when an applicant has been found to have been illegally operating within the past year, and then the current

Planning Division sends them a letter saying that they have been banned. And, that also is appealable.

So, it's okay with me if someone were to insert that there must be a written notice, or there must be an appealable written notice. But, not a notice of violation.

COUNCILMEMBER COUCH: Okay. All right. Thank you, Chair.

CHAIR WHITE: Members, any other need for clarification? Seeing none, thank you very much for being here this morning.

MR. DANTES: Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Edic Sliva, testifying on Bill 43, to be followed by Lisa Sliva.

MR. EDIC SLIVA [testifying on Bill No. 43 (2016)]:

Good morning.

CHAIR WHITE: Good morning.

MR. SLIVA: My name is Edic Sliva, and thank you for this opportunity. I came to Maui 27 years ago on my honeymoon. I think it was 27 years ago, for the first time coming to Hawaii.

CHAIR WHITE: You better be sure about that.

COUNCILMEMBER BAISA: Yea you better, you better be sure.

MR. SLIVA: Well, I'm a little nervous, so I may be off. But, first time to Hawaii, to Maui, and of course, fell in love with the weather, with the smell, with the food, but mostly with the people and the culture. So, then we decided that we're going to, we're going to retire here someday, and we're going to do everything we can to be able to afford that.

Ten years later, after our careers went along, we were able to buy a house and, as a rental property, in preparation of our retirement which seems like another 20 years to come. But, we were able make our dream come true.

When the bill passed to get a permit, we tried to do that. We did everything that was asked of us to do. With the application, I even included a copy of our guests that were coming to our house, and it was denied. It was denied because I was honest. It was denied because I told them I'm operating as a rental. I had no idea I had to lie. I was told that I had to lie, and this is not something I do. We're not experts.

If you want to ask me anything about medical devices, I'll talk for hours. I could probably save your life, but I know nothing about renting a house, and I'm learning as I go along.

And, I urge you to pass this bill because it takes that away. We don't have to lie anymore. And please, be patient with us, because this is not our expertise. And, help us, help us along. Thank you.

CHAIR WHITE: Thank you, Mr. Sliva.

Members, any need for clarification? Seeing none, appreciate your being here this morning--

MR. SLIVA: Thank you.

CHAIR WHITE: --and sharing your thoughts.

Mr. Clerk.

COUNTY CLERK: Next testifier is Lisa Sliva, testifying on Bill 43, to be followed by Catherine Clark.

MS. LISA SLIVA [testifying on Bill 43 (2016)]:

Good morning, Council. Good morning.

CHAIR WHITE: Good morning.

MS. SLIVA: My name is Lisa Sliva, and we do support Bill 43, and to enable denied applications to be able to reapply and come into compliance.

And, yes dear, it was 27 years, just so you got that one right. No, he's absolutely right, we fell in love with Maui. And, I remember we thought, gosh could we ever retire here? That would just be a dream come true. So, since then, we were lucky to

find a house in West Maui, and we've been bringing our kids here and friends here ever since.

We've taken great pride in our home, excuse me a moment. I'm sorry. We've taken great pride in our home, always making an extra effort to have it be very clean and safe, and very enjoyable for our guest. Each year, my husband and I would come for one full week just to fix the house to, you know, you know how homes are, they always need repairs so, to deal with repairs, or upgrade things so the guest could always have the best experience.

So, we applied for the short-term rental, and we were denied for two reasons. One was the advertising and the, we had taken down our ad, the only ad we run which is on VRBO. Well, little to our knowledge, there, some other property manager had high-jacked our listing, put it on TripAdvisor. We didn't even know it existed. And, we learned sometime later that this is a fairly common practice, and that property managers will do that and use another person's property as bait to get advertised, to get renters to look at their rentals.

We tried to get a hold of TripAdvisor to get them to take down the listing. And, since we weren't the authors, they wouldn't do it. And, we tried for many, many months. Finally, they took it down when we threatened them with legal action. But, it took that kind of intensity for them to even respond to us.

The other thing that was cited was that one of our guests many, many years ago had done a little home movie, a little family movie and posted it on YouTube for their friends to see their vacation. And, we didn't even know about it. And, that was also cited as a so-called ad. But, it wasn't an ad, it was just a family's home movie that was posted and some of the footage, obviously they stayed at our home, was of the home. But, it was also of the beach and all over Lahaina. It was a, it was a darling little thing but it was a family, family movie. So, that was considered our, our problem with the advertising.

The other thing that we were misunderstood and a little misled on the rental part, as my husband mentioned, you know, he's admitted openly that the, the renters that were on the schedule. And, we, the ones that had temporary, you know, reservations, we told them sorry you can't stay here. We, you know, turned them away. And, so I guess there was one guest that was there and, and so they were saying that we were operating out of compliance for the, for one guest that was there.

And so, for those two reasons we were denied. And unfortunately, the notice of warning was sent to our wrong mainland address. It was a different city, so we never

even got the warnings in enough time to respond to them before the denial letter came out.

CHAIR WHITE: Ms. Sliva, you'll have to provide a concluding remark please.

MS. SLIVA: Oh, so concluding remarks are, the home that we bought has been a rental property for 20 years. We've had it for 16, the original builder had it for four. So, it's been a rental property and it has maintained the original character of the neighborhood for over 20 years really. And, we would like for you to reconsider. I think in our situation and in good faith, we've tried to do everything we can to be compliant. And, I think if we're given another opportunity, those few little things now that we understand what it is you want to accomplish--

CHAIR WHITE: That's a very--

MS. SLIVA --we'll be able to do it.

CHAIR WHITE: That's a very long concluding remark, but thank you.

MS. SLIVA: Thank you. Thank you.

CHAIR WHITE: Members, any need for clarification? Thank you, Ms. Sliva.

Mr. Clerk.

COUNTY CLERK: Next testifier is Catherine Clark, testifying on Bill Number 43, on behalf of the Maui Vacation Rental Association.

MS. CATHERINE CLARK [testifying on Bill No. 43 (2016)]:

Aloha, Councilmembers. My name is Catherine Clark, and I am a board member of the Maui Vacation Rental Association.

When I get up here to testify, I often wonder what I'm even trying to accomplish. Why are we advocating for the unpermitted properties? The mission of MVRA is to work with government for fair legislation. Our goal is for everyone to have a permit so that ultimately there'd be very little need for enforcement.

And, I have to say that a lot of progress in that direction has been made. The changes to this ordinance will ease the way for future applications. Early this morning, I took a look at VRBO for Haiku. There's 75 listings. Of those 75, there's

six listings for five unpermitted properties. A dramatic change from just 18 months ago.

Maui County is in a position to be a model within the U.S., one of the only places with their vacation rental situation under control. We are so close, and the revisions to this ordinance will hopefully move us to the goal post.

Much of the discussion in the previous meetings was slanted to stop a few, how should we say this nicely; lying, cheating operators. And, there are some. The provisions that were agreed upon will most likely block these applications, and they were designed to do that. It isn't as though any of these changes create an open invitation. There will still be operators unable to meet the criteria. And, we agree, they will simply not have the privilege of getting a permit.

At the last meeting, an amendment was made that would require an NOV to be issued before the five-year ban would take place. Why? It seems only fair that an operator have one warning before such a severe, a severe ban would be imposed. This is exactly the amendment that the Planning Department requested at Planning Commission in May, 2004, and the Commission agreed to with a unanimous vote.

Please keep in mind that this doesn't automatically bring everyone in for a permit. Prior operators must still fulfill a list of requirements to be able to apply, including back taxes, GET, TAT, and after the fact permit fees.

I suppose the big question is whether or not we want compliance, or is the objective to have as few operators as possible? In the March 3, meeting, Ms. McLean said, and I quote, "our goal is to achieve compliance. This is the only statute that we have that says failure to comply results in a ban. If someone's operating a B&B without a permit and we initiate enforcement and they apply, we can issue the permit if they meet the requirements. So comparing enforcement and regulation of STRHs is unique in that way that this particular permit has that ban language, no other one does. You're doing something in the SMA without an SMA permit, and get cited, you submit your after the fact permit, you get your permit, you've cured, excuse me, you've cured the violation", end of quote.

So, I have to ask, like, why is this one permit so different? Wouldn't you feel that doing something without a permit in the SMA is a much larger issue than somebody sleeping in a bed for less than 180 days? And yet, even a violation in the SMA can be cured with an after the fact permit.

Thank you so much for your work on this ordinance. I feel that it offers a fair application process to applicants at the same time that it provides safeguards for our Maui communities. Thank you so much. I know how much work it's been.

CHAIR WHITE: Thank you, Ms. Clark.

Members, any need for clarification?

COUNCILMEMBER BAISA: Chair.

CHAIR WHITE: Ms. Baisa.

COUNCILMEMBER BAISA: Just, thank you very much, Chair. Just one thing that I wanted to clarify in your testimony. You mentioned that you check, was it Airbnb this morning?

MS. CLARK: VRBO.

COUNCILMEMBER BAISA: Okay, VRBO. And, you saw a--

MS. CLARK: I only looked at Haiku.

COUNCILMEMBER BAISA: You only looked at Haiku.

MS. CLARK: I was in a rush.

COUNCILMEMBER BAISA: Okay. And, you said that was a dramatic difference. Tell me, what would it have looked like before when you looked? And, I know you've been looking for the last 10 years--

MS. CLARK: For a long time.

COUNCILMEMBER BAISA: --at least, we had been working on this.

MS. CLARK: I think that, I think that before this Department started enforcement, it was approximately 40 percent permitted, 60 percent no permit.

COUNCILMEMBER BAISA: Wow.

MS. CLARK: Now we're at the point that out of 75 listings, there were, and some are multiple listings for one property.

COUNCILMEMBER BAISA: Right.

MS. CLARK: But, there were six listings, two of those were for one property, so five properties that were non-permitted. They've done a lot of work, and I think the results are there.

I don't know if all communities are the same. Perhaps they focused in that area, but it, it's a significant difference.

COUNCILMEMBER BAISA: Thank you very much. I wanted just a little bit more. Thank you.

MS. CLARK: We're almost there.

COUNCILMEMBER BAISA: Okay, I hope so.

MS. CLARK: I do too.

CHAIR WHITE: Any other questions, Members? Seeing none, thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, there are no further individuals who have signed up to testify in the Council chamber.

If there is any additional individuals in the chamber or at the District Offices who would like to offer testimony, please identify yourself to the appropriate staff and proceed to the testimony lectern or District Office phone at this time.

Hana Office, are there any additional testifiers?

MS. LONO: The Hana Office has no one waiting to testify.

COUNTY CLERK: Thank you.

Lanai Office, are there any additional testifiers?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

COUNTY CLERK: Thank you.

Molokai Office, are there any additional testifiers?

MS. ALCON: There's no one here on Molokai waiting to testify.

COUNTY CLERK: Thank you.

Mr. Chair, there are no other individuals in the District Offices nor the chamber that wish to offer testimony.

CHAIR WHITE: Thank you, Mr. Clerk.

Members, we've received written testimony. Without objections, we'll enter it into the record.

MEMBERS VOICED NO OBJECTION.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY
RECEIVED FROM THE FOLLOWING WERE MADE A PART
OF THE RECORD OF THIS MEETING:

1. Thomas Croly, Maui Vacation Rental Association;
2. David Dantes;
3. Lana Perry;
4. Susan Vickery;
5. Arik Salvador;
6. Amber Lee;
7. Tamara Paltin;
8. Jim Smith;
9. Rene Umberger; and
10. Unite Here! Local 5 Hawaii.

CHAIR WHITE: And without objections, we'll close public testimony.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Thank you, public testimony is closed.

Mr. Clerk, please proceed.

COUNTY CLERK: Mr. Chair, proceeding with the minutes.

MINUTES

The minutes of the Council of the County of Maui's regular meeting of March 4, 2016; public hearing of March 12, 2016; and special meeting of March 12, 2016; were presented at this time.

CHAIR WHITE: Vice-Chair Guzman.

VICE-CHAIR GUZMAN: Chair, thank you, Chair.

I MOVE TO APPROVE THE REGULAR MINUTES OF
MARCH 4, 2016, THE PUBLIC HEARING OF MARCH 12,
2016, AND THE SPECIAL MEETING OF MARCH 12, 2016.

COUNCILMEMBER COUCH:

SECOND.

CHAIR WHITE: We have a motion from Mr. Guzman and a second from Mr. Couch.

Mr. Guzman.

VICE-CHAIR GUZMAN: Nothing further. Thank you, Chair.

CHAIR WHITE: Thank you.

Members, any discussion on the minutes for these three meetings? Seeing none, all those in favor of the motion please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", one "excused". And, that is Mr. Victorino.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, proceeding with committee reports.

COMMITTEE REPORTS

COMMITTEE REPORT

NO. 16-73 - COMMITTEE OF THE WHOLE:

Recommending that Resolution 16-68, entitled "AUTHORIZING SETTLEMENT OF LISA L. HAUPU V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-09-00326," be ADOPTED.

CHAIR WHITE: Mr. Guzman.

VICE-CHAIR GUZMAN: Thank you, Chair.

I MOVE TO ADOPT THE COMMITTEE REPORT IN 16-73.

COUNCILMEMBER COUCH:

SECOND.

CHAIR WHITE: We have a motion from Mr. Guzman and a second from Mr. Couch.

Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you. Chair. Your Committee met on February 5, 2016, March 18, 2016, and April 15, 2016, to consider a request from the Department of Corporation Counsel to authorize settlement of this workers' compensation case.

A Deputy Corporation Counsel noted Lisa Haupu is a former police officer who will, who was participating in a training program when she injured her knee. Although Ms. Haupu had surgery on her knee, and the procedure did not correct the problem. He explained that the Department of Corporation Counsel is requesting authority to settle the case, including issues relating to her partial disability, vocational rehabilitation, future indemnity benefits, and medical and other benefits.

Following an executive meeting, your Committee voted 9-0 to recommend adoption of the proposed resolution to authorize settlement of this matter under the terms proposed in executive session.

I ask the members for support of this motion. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Guzman.

Members, any further discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION NO. 16-68.

COMMITTEE REPORT

NO. 16-74 - COMMITTEE OF THE WHOLE:

Recommending that Resolution 16-69, entitled "AUTHORIZING AN INCREASE IN FUNDING RELATED TO THE EMPLOYMENT OF SPECIAL COUNSEL HUNTON & WILLIAMS LLP, IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, DOCKET NO. 15-17447, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT," be ADOPTED.

CHAIR WHITE: Mr. Guzman.

VICE-CHAIR GUZMAN: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATIONS IN
COMMITTEE REPORT 16-74.

COUNCILMEMBER CRIVELLO:

SECOND.

CHAIR WHITE: We have a motion by Mr. Guzman, and a second by Ms. Crivello.

Mr. Guzman.

VICE-CHAIR GUZMAN: Thank you, Chair. Your Committee met on April 15, 2016, to consider a request by the, by the Department of Corporation Counsel to authorize 350,000 in additional compensation for special counsel Hunton & Williams, LLP for the appeal in this case.

While constrained in its ability to discuss litigation strategy in open meeting, while this case is on appeal, your Committee noted a desire to provide an explanation of the case, including its complexity and importance.

Noting the case has been active for more than four years, a Deputy Corporation Counsel provided background on the Lahaina injection wells and an overview of the case.

Your Committee provided much of the Deputy's overview in this committee report to enable the public to have a better understanding of the issues involved in this case.

The Deputy noted that, assuming that there are no unexpected issues, the increase in compensation for special counsel should be sufficient to cover the County through oral arguments, which the Department anticipates is set sometime in 2017, and, which will be at the end of the appeal.

Your Committee voted 8-0 to recommend adoption of the proposed resolution. I ask for the Members support of this motion. Thank you.

CHAIR WHITE: Thank you, Mr. Guzman.

Members, any further discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION NO. 16-69.

COMMITTEE REPORT

NO. 16-75 - POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE:

Recommending that Resolution 16-70, entitled "RELATING TO THE APPOINTMENT OF IVAN LAY TO THE MAUI COUNTY CULTURAL RESOURCES COMMISSION", be ADOPTED.

Approving the appointment of Ivan Lay to the Maui County Cultural Resources Commission for term expiring March 31, 2020.

CHAIR WHITE: Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

ON BEHALF OF COMMITTEE CHAIR VICTORINO, I MOVE
TO ADOPT THE RECOMMENDATION IN COMMITTEE
REPORT 16-75.

COUNCILMEMBER CRIVELLO:

SECOND THE MOTION.

CHAIR WHITE: We have a motion from Mr. Couch and a second from Ms. Crivello.

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. At its meeting of April 7, 2016, your Policy and Intergovernmental Affairs Committee recommended approval of the Mayor's nomination of Ivan Lay to the Maui County Cultural Resources Commission for a term expiring March 31, 2020, to fill a vacancy due to the resignation of Jarrett Wong.

Your Committee was satisfied with the nominee, that the nominee is qualified to fulfill the duties and responsibilities related to the Commission.

I would like to thank Mr. Lay for volunteering his time to serve on the Commission. I respectfully request the Council's consideration of the motion.

CHAIR WHITE: Thank you, Mr. Couch.

Members, any further discussion? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 16-70.

Mr. Chair, proceeding with County Communications.

COUNTY COMMUNICATION

NO. 16-71 - JOSEPH TALON, CHAIR, SALARY COMMISSION,
(dated April 6, 2016)

Relating to the salary increase for the First Deputy for the Office of the Prosecuting Attorney.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, with no objections from the Members, I request the Clerk to bring up and read County Communications up to 16 and including 16-75.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: No objections. So ordered.

Mr. Clerk.

NO. 16-72 - JOSEPH TALON, CHAIR, SALARY COMMISSION,
(dated April 6, 2016)

Relating to the salary increase for the First Deputy Corporation Counsel.

NO. 16-73 - DANILO F. AGSALOG, DIRECTOR OF FINANCE,
(dated April 15, 2016)

Transmitting a 29 contracts/grants for the month of March 2016.

NO. 16-74 - TIVOLI S. FAAUMU, CHIEF OF POLICE,
(dated April 25, 2016)

Informing of the receipt of \$88,792.71 from the U.S. Marshals Service.

NO. 16-75 - DANILO F. AGSALOG, DIRECTOR OF FINANCE,
(dated April 19, 2016)

In accordance with Section 3.48.135 and Section 3.48.535, Maui County Code, transmitting the Fiscal Year 2016-2017 certification of the net taxable real property valuation for the County of Maui.

CHAIR WHITE: Thank you, Mr. Clerk.

Mr. Hokama.

COUNCILMEMBER HOKAMA:

CHAIRMAN, I MOVE TO FILE COUNTY COMMUNICATIONS
16-71 UP TO AND INCLUDING 16-75.

COUNCILMEMBER COUCH:

SECOND.

CHAIR WHITE: We have a motion from Mr. Couch, I'm sorry, Mr. Hokama, and a second from Mr. Couch.

Mr. Hokama.

COUNCILMEMBER HOKAMA: No further discussion.

CHAIR WHITE: Thank you.

Members, any discussion on this matter? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Clerk.

NO. 16-76 - ELLE COCHRAN, COUNCILMEMBER,
(dated April 13, 2016)

Relating to Councilmembers' report on the Lanai 201H Affordable Housing Project presentation, held on April 8, 2016, at the Lanai Senior Center.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

I MOVE TO REFER COUNTY COMMUNICATION 16-76, AND
THE RELATED ATTACHMENTS SUBMITTED BY ME TODAY
TO THE HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE.

COUNCILMEMBER CRIVELLO:

SECOND.

CHAIR WHITE: We have a motion from Ms. Cochran, and a second from Ms. Crivello to refer County Communication 16-76 to the housing, human concerns, Housing, Human Concerns, and Transportation Committee.

COUNCILMEMBER COCHRAN: Thank you, Chair. Yes, that's a mouthful.

Chair, on April 8, 2016, Councilmembers Riki Hokama, myself, Don Couch, attended a meeting hosted by the Department of Housing and Human Concerns on the subject of the Lanai 201H Affordable Housing Project at the Lanai Senior Center.

I am making this report pursuant to the State Sunshine Law, specifically Section 9-2.5(e) of the HRS.

The presentation was given by Director of Housing and Human Concerns, Carol Reimann; Housing Administrator, Buddy Almeida; Deputy Corporation Counsel, Jeffrey Ueoka; and Councilmember Hokama.

The topics addressed during the presentation included a brief overview of the project, project exemptions and conditions, phasing, the status of the County's request for a proposal for Phase 1, and the criteria for ownership of housing units, pricing, and restrictions.

A quorum of the Council was not present at the meeting. The Lanai 201H Affordable Housing Project meeting was not specifically and exclusively organized for or directed toward Members of the Council, but was a public meeting organized by Department of Housing and Human Concerns. No commitment relating to a vote on any Council business was made or sought at the meeting.

I have prepared a report to the Councilmembers that describes in more detail the, the substance and issues presented at the meeting. Attached to the report is a copy of the PowerPoint slides prepared by the Department and presented at the meeting. Also attached to the report is a handout on affordable sales, price guidelines from the meeting.

I ask that the report, presentation, and handout be, be referred to HHT. And, Mr. Chair, this concludes my report.

CHAIR WHITE: Thank you, Ms. Cochran.

Members, any further discussion on this item?

COUNCILMEMBER COCHRAN: Chair, one second.

CHAIR WHITE: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: I think in my first bullet point, I think I misspoke, I didn't put Ms. Crivello in there. Is that right, you were?

COUNCILMEMBER CRIVELLO: I wasn't.

COUNCILMEMBER COUCH: She wasn't there.

COUNCILMEMBER COCHRAN: Okay. I seem to be listed twice that's why, in my opening report. I wanted to make sure I get the correct names. Mr. Victorino.

Okay, so Chair, let me, can I correct that? So, it was Councilmembers Riki Hokama, Michael Victorino, Don Couch, and myself, that attended this meeting.

CHAIR WHITE: Okay. Thank you for that correction.

COUNCILMEMBER COCHRAN: All right. Thank you.

CHAIR WHITE: Members, any further discussion? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Clerk.

NO. 16-77 - KEITH A. REGAN, ACTING MAYOR,
(dated April 29, 2016)

In accordance with Section 2.41.040, Maui County Code, informing of a vacancy on the Board of Water Supply due to the resignation of Antoinette Lucienne de Naie on April 19, 2016.

CHAIR WHITE: Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

I MOVE TO FILE COUNTY COMMUNICATION 16-77.

COUNCILMEMBER CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Mr. Couch, and a second from Mr. Carroll.

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. This is just to file the resignation, the notice of resignation of Ms. de Naie. I wanted to say that I spoke with her since this filing, and everything is fine, just some things that she needs to do that potentially will take her out of town. So, she thought it'd be better to resign, and appreciates our consideration of this.

CHAIR WHITE: Thank you, Mr. Couch.

Any other discussion, Members? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Clerk.

NO. 16-78 - DAVID TAYLOR, DIRECTOR OF WATER SUPPLY,
(dated April 4, 2016)

Transmitting the Department of Water Supply's Monthly Source Report and Groundwater Use Report for the month ending March 2016.

CHAIR WHITE: Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair.

I MOVE TO FILE THE REPORT.

COUNCILMEMBER COUCH:

SECOND.

CHAIR WHITE: We have a motion from Ms. Baisa and a second from Mr. Couch.

Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. This is just a routine report, and it is filed and available for those who might want to take a look at it. Thank you.

CHAIR WHITE: Thank you. Any further discussion? Seeing none, all those in favor, please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", one "excused".

Mr. Clerk.

COUNTY CLERK: Mr. Chair, the following County Communications are recommended for referral to the following Committees as noted.

NO. 16-79 - DANILO F. AGSALOG, DIRECTOR OF FINANCE,
(dated April 21, 2016)

Reporting on transfers from the General Fund and Department of Water Supply Revenue Fund to the Bond Fund as of March 2016.

The recommended action is that County Communication No. 16-79 be referred to the Budget and Finance Committee.

NO. 16-80 - DANILO F. AGSALOG, DIRECTOR OF FINANCE,
(dated April 20, 2016)

Transmitting a report of short term investments for the quarter ended March 31, 2016.

The recommended action is that County Communication No. 16-80 be referred to the Budget and Finance Committee.

NO. 16-82 - SANANDA K. BAZ, BUDGET DIRECTOR,
(dated April 29, 2016)

Transmitting the Budget Implementation Report as of March 31, 2016 (Fiscal Year 2016 Third Quarter).

The recommended action is that County Communication No. 16-82 be referred to the Budget and Finance Committee.

NO. 16-83 - DON S. GUZMAN, COUNCIL VICE-CHAIR,
(dated April 29, 2016)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO ESTABLISH THE HAWAIIAN CULTURAL RESTORATION FUND".

The recommended action is that County Communication No. 16-83 be referred to the Economic Development, Energy, Agriculture, and Recreation Committee.

NO. 16-84 - KA'ALA BUENCONSEJO, DIRECTOR OF PARKS AND RECREATION, (dated April 19, 2016)

Transmitting the semiannual report regarding park dedications for each community plan area for the period October 1, 2015 through March 31, 2016.

The recommended action is that County Communication No. 16-84 be referred to the Economic Development, Energy, Agriculture, and Recreation Committee.

NO. 16-85 - DON COUCH, COUNCILMEMBER,
(dated April 15, 2016)

Relating to the Community Plan Update Process.

The recommended action is that County Communication No. 16-85 be referred to the Planning Committee.

NO. 16-81 - JEFFREY A. MURRAY, FIRE CHIEF,
(dated April 27, 2016)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT FOR A JOINT TRAINING AGREEMENT BETWEEN COWLITZ 2 FIRE AND RESCUE OF THE STATE OF WASHINGTON AND THE COUNTY OF MAUI'S DEPARTMENT OF FIRE AND PUBLIC SAFETY".

The recommended action is that County Communication No. 16-81 be referred to the Policy and Intergovernmental Affairs Committee.

NO. 16-86 - TIVOLI S. FAAUMU, CHIEF OF POLICE,
(dated April 19, 2016)

Transmitting a proposed resolution entitled "AUTHORIZING ACCEPTANCE OF A DONATION OF THREE MORPHO TRAK LIVESCAN MACHINES FOR THE WAILUKU DISTRICT RECEIVING DESK AND THE LAHAINA DISTRICT PRISONER PROCESSING AREA FROM THE HAWAII CRIMINAL JUSTICE DATA CENTER TO THE COUNTY OF MAUI, DEPARTMENT OF POLICE, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE".

The recommended action is that County Communication No. 16-86 be referred to the Policy and Intergovernmental Affairs Committee.

NO. 16-87 - RIKI HOKAMA, COUNCILMEMBER,
(dated April 28, 2016)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO PROHIBIT THE CORPORATION COUNSEL, PROSECUTING ATTORNEY, AND THEIR DEPUTIES FROM SUPPORTING, ADVOCATING, OR AIDING IN THE ELECTION OR DEFEAT OF ANY CANDIDATE FOR COUNTY PUBLIC OFFICE".

The recommended action is that County Communication No. 16-87 be referred to the Policy and Intergovernmental Affairs Committee.

CHAIR WHITE: Thank you, Mr. Clerk. Members, are there any objections to the referrals as read by the Clerk?

COUNCILMEMBER BAISA: Mr. Chair.

CHAIR WHITE: Ms. Baisa.

COUNCILMEMBER BAISA: Mr. Chair, it's not a big deal, but I just would like to understand why item 16-83 which involves establishing a Hawaiian Cultural Restoration Fund, is not involved with money?

CHAIR WHITE: Well the, the reason for this referral, and that's up for discussion, but, as we've done with other, like the EDRF Fund that went to the EAR Committee for the, for the crafting of the, of the, the ordinance. And obviously, any, any further action on that to fund it would go to the, the Budget and Finance Committee.

COUNCILMEMBER BAISA: Okay.

CHAIR WHITE: Any other discussion, Members? Seeing none, so ordered with the referrals.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, proceeding with ordinances, for second and final reading.

ORDINANCES

ORDINANCE NO. _____
BILL NO. 38 (2016)

A BILL FOR AN ORDINANCE AMENDING
THE FISCAL YEAR 2016 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO ESTIMATED REVENUES;
OFFICE OF THE MAYOR, ECONOMIC DEVELOPMENT PROGRAM;
TOTAL OPERATING APPROPRIATIONS; AND
TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, if the Members have no objection, I would ask the Clerk to bring up Bills 39 up to 42.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: So ordered.

Mr. Clerk.

ORDINANCE NO. _____
BILL NO. 39 (2016)

A BILL FOR AN ORDINANCE AMENDING
THE FISCAL YEAR 2016 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO APPENDIX A, PART I, GRANT REVENUE -
SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS,
DEPARTMENT OF POLICE
(PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT ACT)

ORDINANCE NO. _____
BILL NO. 40 (2016)

A BILL FOR AN ORDINANCE AMENDING
THE FISCAL YEAR 2016 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO APPENDIX A, PART I, GRANT REVENUE -
SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS,
DEPARTMENT OF WATER SUPPLY
(STATE OF HAWAII - WELLHEAD PROTECTION PROGRAM)

ORDINANCE NO. _____
BILL NO. 41 (2016)

A BILL FOR AN ORDINANCE AMENDING
THE FISCAL YEAR 2016 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO APPENDIX A, PART I, GRANT REVENUE -
SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS,
DEPARTMENT OF HOUSING AND HUMAN CONCERNS
(STRATEGIC PREVENTION FRAMEWORK
PARTNERSHIPS FOR SUCCESS)

ORDINANCE NO. _____
BILL NO. 42 (2016)

A BILL FOR AN ORDINANCE AMENDING
THE FISCAL YEAR 2016 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO APPENDIX A, PART I, GRANT REVENUE -
SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS,
DEPARTMENT OF PARKS AND RECREATION
(STATE OF HAWAII - MOLOKAI ATHLETIC COMPLEX)

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Thank you, Mr. Clerk. That was a mouthful.

CHAIRMAN, I MOVE THAT BILLS 38 UP TO AND INCLUDING
BILL 42 PASS SECOND AND FINAL READING.

COUNCILMEMBER COUCH:

SECOND.

CHAIR WHITE: We have a motion from Mr. Couch and a second from Mr. Couch.

COUNCILMEMBER COUCH: Actually, that would be a motion from Mr. Hokama.

CHAIR WHITE: Mr. Hokama, what am I? Motion from Mr. Hokama and a second from
Mr. Couch.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, I believe the Clerk gave appropriate descriptions of each bill for final reading. Thank you.

CHAIR WHITE: Members, any further discussion? Seeing none, all those in favor, please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with, measures pass with eight "ayes", zero "noes", and one "excused".

And, with that, Members, since the next bill is likely to take some time, we'll take a, our morning break. Please be back in your seats at 10:15. We're in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:03 A.M., AND WAS RECONVENED AT 10:15 A.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBER VICTORINO, EXCUSED.)

CHAIR WHITE: This meeting will please come back to order.

Members, we are on our final item, Bill No. 43.

And, Mr. Clerk.

ORDINANCE NO. _____
BILL NO. 43 (2016)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING
ORDINANCE RELATING TO SHORT-TERM RENTAL HOMES

CHAIR WHITE: Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

I MOVE TO PASS BILL NO. 43 (2016) ON SECOND AND
FINAL READING.

COUNCILMEMBER CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Mr. Couch and a second from Mr. Carroll.

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I have a list of amendments that I want to go through first. So, if the Members could follow along the Amendment Summary Form.

MY FIRST AMENDMENT IS TO, I MOVE TO AMEND BILL
NO. 43, SECTION 19.65.030, BY INSERTING LANGUAGE IN
PARAGRAPH A TO STATE THAT ANY REFERENCE TO A
SHORT-TERM RENTAL HOME PROPERTY SHALL MEAN
PROPERTY, LOT, OR CONDOMINIUM UNIT.

COUNCILMEMBER CARROLL:

SECOND.

CHAIR WHITE: Okay, we have a motion from Mr. Couch, with a second from Mr. Carroll.

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. This motion adds a new section 4 to Section 19.65.030A of the bill as shown in the Amendment Summary Form. This section treats a condominium unit like a regular property for short-term rental home purposes. It should therefore be clarified that condominium units are like regular properties throughout the bill, or else it would be confusing and inconsistent.

The Planning Department asked for these amendments, by the way.

Without this clarification, all owners of an entire property would have to sign an application form for one short-term rental home on one condo, condominiumized unit. All owners would be cited for short-term rental home violations on one

condominiumized unit, and all owners would be responsible for compliance for all condominiumized units.

It was the intent of your Planning Committee to allow large condominium property regime properties, like the International Colony Club to get individual short-term rental home permits, then this language needs to be added or else none of these applicants would qualify.

CHAIR WHITE: Thank you, Mr. Couch.

Members, any further discussion on this item? Seeing none, all those in favor of the motion to amend please say "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

I MOVE TO AMEND BILL NO. 43, SECTION 19.65.030, BY
INSERTING PARAGRAPH G, IN PARAGRAPH G THE
LANGUAGE "OR PERSONS" AND "OR WHO ARE
TRUSTEES".

COUNCILMEMBER BAISA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Couch, and a second from Ms. Baisa.

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. This motion clarifies that the applicant and permit holder may be more than one person as shown in the Amendment Summary Form. The rest of the bill the, in the rest of the bill, the applicant and permit holder can be more than one person. For example, husband and wife, or siblings, who together own at least 50 percent of this, and the same should be true for the trustee.

This clarification will make it consistent throughout the bill.

CHAIR WHITE: Okay. Members, any discussion on this item?

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: A question for Mr. Couch. He mentioned in the first amendment that Planning Department asked for it. Is this also the case?

COUNCILMEMBER COUCH: Yea, all these motions.

COUNCILMEMBER COCHRAN: All of them?

COUNCILMEMBER COUCH: All my motions, yep.

COUNCILMEMBER COCHRAN: Okay, got it. Thank you, Chair and Mr. Couch.

CHAIR WHITE: Thank you. Any further discussion, Members? Seeing none, those, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

I MOVE TO AMEND BILL NO. 43, SECTION 19.65.080(A), BY STRIKING THE LANGUAGE "PURSUANT TO SECTION 19.530.030 OF THIS TITLE, THE RULES OF THE APPROPRIATE PLANNING COMMISSION IF THE PERMIT WAS ISSUED BY THE PLANNING COMMISSION, AND THE RULES OF THE DEPARTMENT."

(Councilmember Hokama was excused from the meeting at 10:22 a.m.)

COUNCILMEMBER CARROLL:

SECOND.

CHAIR WHITE: Okay, we have a motion from Mr. Couch, and a second from Mr. Carroll.

Mr. Couch.

COUNCILMEMBER COUCH: This motion deletes language that was deleted elsewhere in the bill for the consistency as shown in the Amendment Summary Form. This language was deleted from 19.65.070.F.1 and was surely intended to be deleted here too. It would be confusing and inconsistent for it to remain here but deleted elsewhere.

CHAIR WHITE: Members, any discussion on this item?

VICE-CHAIR GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

VICE-CHAIR GUZMAN: Where is it deleted elsewhere?

COUNCILMEMBER COUCH: It was deleted in the bill as, if you look in the, in the bill, on 19.65.070.F.1.

VICE-CHAIR GUZMAN: And the, and the purpose of deletion is because it's no longer in effect, this 19.530.030?

COUNCILMEMBER COUCH: It's my understanding, and I think the Department can explain it further, this was a request by Corporation Counsel.

VICE-CHAIR GUZMAN: Okay.

CHAIR WHITE: And, Members, both the Department and Mr. Hopper are available. And, I'm willing to bring them down if you'd like to ask them some questions. So, Mr. Guzman, if you'd like to--

VICE-CHAIR GUZMAN: Yes, I, I would--

CHAIR WHITE: --pose a question to the Department.

VICE-CHAIR GUZMAN: --would request that they be as a resource.

CHAIR WHITE: Okay, Deputy and Director, could you please come down, without objection, Members.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: The Chair's feeling is that we are not going to send this back to Committee, so the Chair is willing to take whatever time is necessary to get through these proposed amendments.

Mr. Guzman.

VICE-CHAIR GUZMAN: Thank you, Chair. I'd like to ask the Department, or the Deputy Corporation Counsel what is the intent and purpose of the, of the deletion, deleted section.

DEPUTY CORPORATION COUNSEL MICHAEL HOPPER: Yea, Mr. Chair, I don't recall specifically asking for, for this deletion. I don't think it makes a substantive difference. Right now it, I think clarifies the, the procedures for revocation a bit. But, whether or not the 19.530 or those other sections are listed there, it's kind of presumed that any action taken is going to be pursuant to the applicable rules that are, are, are already under the law. So, I think it, it simplifies the section a bit. So, I don't have a problem with it.

If you would like to keep it, I think that's fine. But, I think the revocation procedure would have to proceed through a written notice to the, to, for, to the applicant who's, or permit holder who's permit's being revoked. And, that person would have to have an opportunity to appeal to the Board of Variances and Appeals. But, because all of that's already written into the Code and applies generally throughout Title 19, I don't

think that this is required language here. It may be helpful so I don't have a problem with, with retaining it. But I think it's, it's potentially redundant.

CHAIR WHITE: Deputy Director.

DEPUTY PLANNING DIRECTOR MICHELE MCLEAN: Thank you, Chair. This language refers to 19.530.030, and it suggests that there is a revocation process, or a non-renewal process in 19.530.030; there is not.

It also suggests that the rules of the Planning Commission have provisions for revocation or non-renewal of short-term rental home permits, and they don't.

It also suggests that the Department rules have provisions for revocation of short-term rental home permits, and they don't.

The bill itself provides detailed standards for when to revoke and when not to renew. So, references to other rules aren't needed because it's spelled out very clearly, and in a lot of detail in the ordinance. So, that's really the only thing that we need to follow when considering whether to renew or not, or whether to revoke, is what's spelled out in the actual ordinance.

VICE-CHAIR GUZMAN: Would there be, at some point in the future, rules would be made by the Planning Commission, and the, I guess the Department, that this could be used at a future time?

DEPUTY PLANNING DIRECTOR: I don't think that the Planning Commission would adopt rules specific to short-term rental home permits. Most short-term rental home permits are issued by the Department. Just the ones that meet the triggers go to the Planning Commissions.

The Department does have some draft administrative rules for bed and breakfast and short-term rental homes. But, those are quite a way from being formalized and adopted.

VICE-CHAIR GUZMAN: So, you're saying that you wouldn't want to have that flexibility, a generalization to allow something in the future, or rulemaking in the future for these entities, or these departments, commissions.

DEPUTY PLANNING DIRECTOR: I believe the, early on in the bill, there's a provision that authorizes the Department to adopt administrative rules to administer it.

(Councilmember Hokama returned to the meeting at 10:24 a.m.)

DEPUTY PLANNING DIRECTOR: When it comes specifically to what the amendment that we're talking about today which relates to revocation, and also relates to the section on non-renewal. Because those provisions are so specific in the ordinance, it's unlikely that administrative rules are going to further elaborate on that process.

You know, the administrative rules are needed when the ordinance might be vague or not have a whole lot of detail. But, because these provisions are very detailed, I don't know what administrative rules would have to clarify or, or spell out cause the ordinance is so detailed.

DEPUTY CORPORATION COUNSEL: May I, Mr. Chair.

VICE-CHAIR GUZMAN: Mr. Hopper.

DEPUTY CORPORATION COUNSEL: Yes. At the end of the short-term rental home law already, 19.65.090, it does say in that section titled "Administrative rules", it says "The Director may adopt the administrative rules to implement the provisions of this chapter." That's in general throughout the--

VICE-CHAIR GUZMAN: In general, right.

DEPUTY CORPORATION COUNSEL: Yea, through, throughout anything. So, if the Department wanted to look at administrative rules to, to more precisely define how a permit would be revoked, it already does have the power to do that.

VICE-CHAIR GUZMAN: Okay. Okay. Thank you, Chair.

CHAIR WHITE: Thank you.

Any further discussion on this motion, Members? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

I MOVE TO AMEND BILL NO. 43, SECTION 19.65.080(C), BY
STRIKING THE LANGUAGE "OF RECORD".

COUNCILMEMBER BAISA:

SECOND.

COUNCILMEMBER CARROLL: Second.

CHAIR WHITE: We have a motion by Mr. Couch, and a second by Ms. Baisa.

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. This motion deletes the unnecessary phrase of "of record". The phrase "of record" is not needed and is not used elsewhere in the bill.

Most lessees do not have a recorded lease. This would remove this very powerful enforcement tool from the properties that are leased and then put into short-term rental home use.

CHAIR WHITE: Members, any further discussion or need for clarification?

Mr. Hokama.

COUNCILMEMBER HOKAMA: Wouldn't that be to our advantage to have a lessee of record recorded. That tells us that the property owner is aware of what they're doing, so why wouldn't we keep that requirement, Department? If I may ask the Department, please?

CHAIR WHITE: Yes. Deputy Director.

COUNCILMEMBER HOKAMA: Or, Mr. Hopper. Either one, if you could share a comment please.

DEPUTY CORPORATION COUNSEL: Well, because this section deals with the, whether or not a communication that offers, this is essentially dealing with advertising being treated as prima facie evidence. If you have lessee of record, I suppose someone could attempt to argue that, well I'm, I don't have a, a recorded lease so therefore, you can't use my communications as evidence of operation. And, I don't really think that there's a basis for that.

I think if there's someone that has a lease, whether or not that lease is recorded, if there's evidence of them advertising their property, that should still be used as prima facie evidence of operation.

So, this doesn't go to whether or not to operate someone needs to have a recorded lease. It's basically going for the, for the section on whether or not there's evidence to find that they are operating illegally. So if, if anybody, whether or not they have a lease that's recorded, if, if they're, you know, they're leasing property and they're advertising that property as being for, for short-term rental home permit use, this is going to say you don't necessarily have to have that lease recorded.

COUNCILMEMBER HOKAMA: Well, you know, I read someone's testimony about the issue of enforcement, and I appreciate that comment that was shared with the Members, Mr. Hopper.

So, I was thinking "of record" would assist the County in enforcement, cause isn't this about enforcement? Revocation and enforcement component of the bill?

DEPUTY CORPORATION COUNSEL: That's correct, Mr. Chair. I think taking out "of record" actually would help the County's enforcement, because it would mean that it could use evidence whether or not that that, it's talking about using evidence of that lessee advertising for the property. And, it would be, I think, more advantageous to not have to prove that that lessee has a recorded lease.

Anybody leasing the property who advertises it as a, as a short-term rental home, you can use that as evidence of operation. And, so I think that's going to be easier for someone to, to look at that and say this is clear evidence of operation, and I think "of record" is probably language that's not, not needed there and could potentially narrow the evidence the Department could use in order to prove a violation. So, I think if it's taken out, there's actually more evidence the Department can use in order to establish a violation.

And, maybe the Department has more comments on that as well, if that was their thought.

CHAIR WHITE: Deputy Director.

DEPUTY PLANNING DIRECTOR: Thank you, Chair. No, Mike, Mike explained it well. It narrows it down to only recorded lessees being the ones who would be able to be enforced against for advertising.

If it was a lessee without a recorded lease, then this provision wouldn't apply to them if that language stays in.

DEPUTY CORPORATION COUNSEL: And, in fact, Mr. Chair, it may be prudent to also remove the second "of record", which appears later on in that same paragraph if, to be consistent with the first sentence. I, I am seeing that.

It does say "the burden of proof shall be on the owner, operator, or lessee of record."

CHAIR WHITE: Oh yes.

DEPUTY CORPORATION COUNSEL: Taking out that second "of record" would be a, a good idea, especially if this bill's going to be reposted to include that change.

COUNCILMEMBER HOKAMA: Okay, Chairman. I, I'm okay. I just find it interesting, though, we still say the permit may be revoked if you violate all this subsections. Interesting way of addressing a bill. Thank you.

CHAIR WHITE: Okay, Mr. Couch.

COUNCILMEMBER COUCH:

MR. CHAIR, I WOULD LIKE TO AMEND MY AMENDMENT TO
INCLUDE THE SECOND "OF RECORD" IN THERE TO
DELETE.

COUNCILMEMBER BAISA:

SECOND.

CHAIR WHITE: We have an amended motion from Mr. Couch and a second from Ms. Baisa.

Mr. Couch.

COUNCILMEMBER COUCH: No further comment.

CHAIR WHITE: Okay. I, I would agree that this broadens the ability to, to enforce, as opposed to limiting it.

So, any further discussion on this item, Members? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

And, we have two more amendment requests. The next one filed was from Ms. Cochran.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. We can, mine's a pretty big and heavy duty one. You want to do Mr. Carroll's first?

CHAIR WHITE: They're both big and pretty heavy.

COUNCILMEMBER COCHRAN: Okay. All right, I shall start then. Thank you, Chair.

I MOVE TO AMEND BILL 43 (2016), BY STRIKING THE
LANGUAGE "WHO HAS BEEN ISSUED A NOTICE OF
VIOLATION" FROM THE THIRD SENTENCE IN SECTION
19.65.080(E).

VICE-CHAIR GUZMAN:

SECOND.

CHAIR WHITE: Okay, we have a motion from Ms. Cochran, and a second from Mr. Guzman.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair, thank you very much. And, thank you, Mr. Guzman. Chair, the Amendment Summary Form outlines my proposed changes to bill, my change to Bill 43.

The notice of violation language was added at first reading. My motion deletes the language, and goes back to what was recommended by your Planning Committee. And, there is testimony earlier in the explanation that it was kind of a last minute change and, and all that on April 15.

And, the justification for the first reading amendment to require a notice of violation prior to imposing the five-year ban was to provide due process to illegal operators. However, under the Committee's bill, illegal operators already had a method of challenge and appeal to the ban. Requiring a notice of violation prior to a ban delays the start of the ban, places an additional burden on Planning Department and Corporation Counsel, and is unnecessary.

When a person is caught operating illegally, they are informed by Planning Department that they must stop operating, and are ineligible to apply for a permit for five years. That person has several options to contest the Department's decision. So, they have options.

- 1) The operator can show that they have a valid permit, or are operating as a grandfathered-use, or otherwise are legally permitted. If they do so, the Department will lift the ban.
- 2) The operator may provide information showing that they were not operating a short-term rental. For example, an owner who can show the advertising was from a prior owner, is outdated, or is for another property, would not be subject to the ban.
- 3) If the operator believes the Planning Director acted in error in imposing the ban, the operator may appeal the decision to the Board of Variances and Appeals within 30 days. At the appeals hearing, the operator would have the opportunity to present evidence and make arguments against the imposition of a ban, and the Department would be required to defend its findings.

So, the above procedures are adequate due process as to the ban. Requiring a formal notice of violation in all instances before a ban may take effect delays the imposition of a very important tool used to stop illegal operators.

Notice of violations are better used to enforce against operators who continue to operate illegally after warning an imposition of a ban. The formal process, which requires Corporation Counsel's assistance and additional departmental enforcement resources, should be reserved for the most flagrant of violators who disregard the law and warnings from the Department. Deleting this language would put teeth back into the bill and would eliminate the additional time and manpower the added requirement would cause.

I respectfully ask for this Council's support of my motion to delete the notice of violation language from the bill.

CHAIR WHITE: Thank you, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR WHITE: Members, any further discussion?

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And, I understand Ms. Cochran's concerns. However, I'd like to give two points.

First point is an example. An example, if somebody breaks into a home and steals something out of the home and is caught on their webcam, and everybody sees it on Facebook. They still get a chance to go through the process to determine whether they're guilty or not. This process says, no you're guilty, you have to appeal immediately. If there can, this person who breaks in the home is convicted, then they get their chance to appeal. We're saying, no, no chance to even go to trial or anything, you have to appeal immediately. I don't think that's fair.

The other thing is, is if we leave it at notice of violation, it'll give incentive to the Department to issue those notices of violations so that they can ban these people. Right now they have no incentive, they just ban them. And, there have been reports and documentation that they have banned them without anything in writing. And, that's my biggest concern, is people will call up and say oh, you can't, they say you can't, you've been advertising so you're banned, so don't even come and apply; that has happened.

So, that's why I've put it, I've asked to put it at notice of violation: 1) to give the Department incentive to actually issue the notices of violation and move forward in the enforcement; and 2) to give somebody a chance, you know, where you're innocent until proven guilty except for in this case. Thank you.

CHAIR WHITE: Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I think what's troubling me here is what we're trying to do. What we're trying to do is to get people to come forward, apply, go through a process, and hopefully get a permit. When we ban them, we can ban them, but it doesn't mean they're going to stop operating. We've seen this. In fact, it may be more of an incentive to them to just keep on doing it, and say I'm banned already, what do I have to lose, I can't get a permit.

So, I really would prefer that we try to leave the language in there and see how that works. Again, I think that this ordinance is a work in progress, and it's fairly new. And, we're going to have it a little while more, and try a few more things until we actually hit on the silver bullet. It's not there yet. Thank you.

CHAIR WHITE: Mr. Guzman.

VICE-CHAIR GUZMAN: Thank you, Chair. I was involved in the, I believe the March, the March discussion when we had the Department specifically elaborate on this section. And, I think we spent a good, an hour and a half on it. I voted no at that time, and I still will vote no based on the reasoning given by the Department.

I, I also advocate for one of the testifiers saying that this is somewhat of a retroactive enforcement. And it's, it's basically we're chasing them down, giving, and at that point, then we go through a rigorous process to then determine whether they are really guilty of operating in illegal operations. Clearly they, either they are or they aren't, it's as simple as that. And then, by having this language in there, we, we, the, the burden is placed more so on the Department to track these, to track these violators down.

I, I appreciate Mr. Couch's, I guess analogy or example, but those are almost felony criminal cases. This is a de-criminal matter, which is administrative. So, in terms of having reasonable due process, I think that there are measures already in place, as the Department explained during that meeting, that allow the due process to be ensured through the administrative procedures.

So, at this point, I'd like to call on the Department to elaborate more on what type of procedures are in place for notice, and what they do. I know it was a, it's almost like de ja vu bringing it back up, but I'd like to have some input from the Department at this level.

I know it was voted down, that section, when it was, tried to be amended at Committee meeting. And, there was a last ditch effort by the introducer to call on the vote again during first reading. So, you know, it's okay for persistency, but I still want to hear the Department's input again. Thank you.

CHAIR WHITE: Department.

DEPUTY PLANNING DIRECTOR: Thank you, Chair. Yes, we did discuss this at length in Committee. And, I believe we made our position clear, we prefer for the more aggressive language that came out of the Committee. We were surprised that the change was made at first reading, but as you can see, we didn't testify asking that it be rescinded.

Essentially, we feel that we will be equally criticized either way for either enforcement being too severe, or it being too lax. The original language is a little bit more aggressive. And, I think the Committee voted that way because you've included this grace period through the end of the year.

There was some very strong testimony from the Committee that you really wanted to open it up and give operators this final opportunity to come in and get their permits. We all seem to agree that people know, for the most part, that they need to get their permits. And, this would be the last opportunity through the end of the year to get their permits.

After that, it comes down to a simple call. It's a relatively easy decision to make. After this grace period, when we find that someone is operating without a permit, do you want them to be banned right away, or do you want them to be given a notice of warning so then they can apply and have that further grace period before they might get banned again?

The impression that we had from the Committee was that no, the end of the year is it. After that, if you're still operating, you've had this phenomenal opportunity. After that, if you're still doing it, you're done. That's the impression that we got from the Committee. And if that's how you still feel, then that's the amendment that's before you. If you feel that after that point, if you still want someone to have the chance to apply at notice of warning, then you keep the language as it came out of first reading.

We don't feel that there is, would be enough of an incentive, people would still wait until they got that notice of warning. We would still be the ones prodding them, you had this grace period, you didn't take advantage of it, now here's your notice of warning. Okay, okay, okay, now we'll go and get the permit. We're just like, at some point you have to say no, you're done. We feel that that's a step earlier than, than others might. Thank you, Chair.

CHAIR WHITE: Thank you.

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I seem to recall at that meeting, but, and I may be mistaken, but I think it was a three to three vote, so it wasn't strong in one way. There was strong sentiments, and I agree that there were strong sentiments, but I wouldn't say it was a strong vote from the Committee.

But, I just want to remind the Members on every other permit, including SMA permits which are very strict and very, I mean it, those are very important permits, they get a chance to come after the fact and say, oops I'm sorry I didn't know, I get to, I'll do the after the fact permit. Everywhere else, every other permit, we give, everybody gets an after the fact chance except this one. That's why I put it in there. Thank you.

CHAIR WHITE: Any further discuss--

Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. It's always difficult to make decisions like this when we have no real knowledge of what happens either way until it's implemented.

But, I agree with Mr. Couch because in my Committee, I come across a lot of land use issues where we have similar problems where somebody has an illegal building. And, I don't allow it to be processed, their application, until they rectify the fact, and go over there, and go to the Planning Department and become legal, or I won't hear their application. But, there is a chance over there for them to do it. I had one last year, had two small illegal structures that I held out for, gee I don't know, almost a year I believe, until they rectified the situation.

So, I really appreciate Ms. Cochran's resolution, but I think I will have to agree with Mr. Couch that I think we need to offer a chance over there. So, I will not be supporting the amendment on the floor. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

VICE-CHAIR GUZMAN: Chair.

CHAIR WHITE: Mr. Guzman.

VICE-CHAIR GUZMAN: This is my last opportunity, because I will speak no further on this matter. But, I, I would agree with Ms. Cochran and her support of the Hana community, and their realization that they need enforcement ASAP in that area. And, this, this language would provide the teeth and the hammer to get it done.

I would also say that when you compare SMA's to this in, in particular issue, the difference is most of those after the fact permit issues are with residential with, with people changing their own homes. In this particular case, you have a commercial component attached to it. You have a money generated, they're, they're under the tax code, under commercial residential. So, you have to look at it as, is this business violating the law? And, I say yes.

I mean, if, if we have Administrative Rules and the code that says hey you're been, we're giving you a six months grace period. There's no other doubt in my mind that if you don't, if you don't come in now, you shouldn't be given a, a notice of warning to delay the process later, later down the road. It just doesn't make sense.

So, I advocate for Ms. Cochran and the, and Hana community because I know they are suffering at this point. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Guzman.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. If you'd grant me some closing comments after hearing everyone out. And, you know, and I appreciate both sides in stating their case.

So, yea, I want to reiterate that there is that grace period right now. And, they've been talking about this, and so anyone out there who is clueless about what this is about, that you need to come in and get legal and what have you, is like Mr. Guzman said, you're bad and guess what, you're going to have to pay the consequences.

I, you know, and there's statistics showing that regardless if it's a "McMansion" renting out and this and that, the, the prices, that price is driving up the affordable rental for our local people. And, just overall in Hana, as Mr. Guzman mentioned,

these homes that use to house long-term local families have flipped into short-term rentals because they can make a profit. And, yes, it's a commercial, it's a business.

And, people that come here and testify are profiting. To me, to come here lobby, to assist in writing language in this bill which in the end they, they stand to gain monetarily, have profit at what they do for a living, for me really smells of conflict. So, that in itself I don't appreciate. But, getting back to what this is about, Local 5 sent in some wonderful testimony, hopefully everyone got to look through that and share the statistics as in how people are getting outpriced; our local people.

We sit here every day talking about affordable housing, affordable rentals. Well this is not helping, so that is why I feel strongly, why I'm really passionate about it. And on our really quick break, Chair, I went and I went onto VRBO, Airbnb, and you know what, there's 7,000 rentals on Maui island alone. There's over 3400 of them advertised for South Maui alone. I mean, that is out of control. And, so to take the teeth away from this Department to enforce, I, I'm not going to stand by and let that happen.

So, this is why I'm proposing this. This is why I'm pushing it forward. I know we don't like to do this kind of work here, but you know, this is the last chance and I'm going to stand by what I believe in, and that is with our local people, that is for this community. And, we all sit here and say we want to help. Well, guess what? In favor of the current form is not helping.

So, Chair, I said enough. And, I think everyone got the point. So, thank you very much.

CHAIR WHITE: Thank you, Ms. Cochran. I agree with some of your sentiment, but I believe that many of the, the number of accommodations that are listed under the 7,000 are legal because they're in condominiums and so forth. So, a lot of condo owners in, in South Maui and West Maui that, that rent through VRBO rather than going through one of the, the usual companies.

So, any further discussion on this item?

The Chair's feeling is that--

COUNCILMEMBER BAISA: Chair. Chair.

CHAIR WHITE: --the fact that we're doing.

Oh, I'm sorry. Ms. Baisa.

COUNCILMEMBER BAISA: Just one more comment. You know, we sit here setting rates and fees every year. And one of the things we talk about are after the fact permits. The fact that we have after the fact permit fees tells me that this is not unusual. That's it.

CHAIR WHITE: Yea, good point. And, at the same time, a lot of the after the fact permits are when people buy a home and realize that they're out of compliance and have to go in for after the fact permits.

But, the Chair's feeling is that we have a, we've been, I think, reasonable with the extension of the, the grace period for six months. The Chair's feeling concurs with the Department's position that, that we need to have a hammer to use in this instance. If you're not going to take advantage of the grace period, then we need to, we need to make sure that people realize there are consequences if you're not following the law.

So, I think we've been reasonable in the way we've approached this. And, I agree with Ms. Cochran that we need to take it back, as I said in the last meeting, back to the original intent.

So, any further discussion, Members? I think most of you have used up your two times.

Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. I would assume we're probably going to go with a voice vote on this. But, my last comments, since Mr. Victorino is not here, I'm sure he'd like me to say something extra. If not, to fill in the time of course.

CHAIR WHITE: Thank you for channeling Mr. Victorino.

COUNCILMEMBER CARROLL: I really appreciate Ms. Cochran's one. And it's, I think we all pretty much have the same feeling. We get a little bit disgusted with all the, how the process has gone all these years, and we really want to make it work, and we're just tired of it. And, I think that's a lot of the feeling that has come to me, and Ms. Cochran, and the rest. But, we need to be fair about it. We need to come up with a process that does address fairness. And, so I won't be supporting the motion on the floor. Thank you.

CHAIR WHITE: Thank you, Mr. Carroll.

Any further discussion?

Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you. I'm not on the Planning Committee, so I kind of hesitate. But, I would, you know, when it first came on with Mr. Couch's proposal, I, I must say I voted in favor of.

But, as I try and tune in further into this so-called problem that we have, and the short-term rentals and what have you, I, I don't see any harm in us to add a heavy hammer, such as what the amendment to Ms. Cochran's proposal is. So, at this time I will support the amendment that Ms., Councilmember Cochran is setting forth.

CHAIR WHITE: Any further discussion, Members?

As Mr. Carroll mentioned, it's probably going to end up with a voice vote, so we'll just start with a roll call.

Mr. Clerk.

COUNTY CLERK:	Councilmember Robert Carroll.
COUNCILMEMBER CARROLL:	NO.
COUNTY CLERK:	Councilmember Gladys Coelho Baisa.
COUNCILMEMBER BAISA:	NO.
COUNTY CLERK:	Councilmember Elle Cochran.
COUNCILMEMBER COCHRAN:	AYE.
COUNTY CLERK:	Councilmember Don Couch.
COUNCILMEMBER COUCH:	NO.
COUNTY CLERK:	Councilmember Stacy Crivello.
COUNCILMEMBER CRIVELLO:	AYE.

COUNTY CLERK: Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: AYE.

COUNTY CLERK: Council Pro Temp Michael P. Victorino.

CHAIR WHITE: EXCUSED.

COUNTY CLERK: Council Vice-Chair Don S. Guzman.

VICE-CHAIR GUZMAN: AYE.

COUNTY CLERK: Council Chair Mike White.

CHAIR WHITE: AYE.

AYES: COUNCILMEMBERS COCHRAN, CRIVELLO,
HOKAMA, VICE-CHAIR GUZMAN, AND CHAIR
WHITE.

NOES: COUNCILMEMBERS BAISA, CARROLL, AND
COUCH.

EXCUSED: COUNCILMEMBER VICTORINO.

COUNTY CLERK: Mr. Chair, there's four "ayes", four "noes".

COUNCILMEMBER COUCH: Five.

COUNCILMEMBER CRIVELLO: Five.

COUNCILMEMBER COUCH: Five ayes.

COUNTY CLERK: Excuse me, five "ayes".

COUNCILMEMBER COUCH: Three noes.

COUNTY CLERK: Three, and one "excused".

CHAIR WHITE: Thank you, Mr. Clerk.

And, we have one more recommended amendment from Mr. Carroll.

Mr. Carroll.

COUNTY CLERK: Mr. Chair, may I have a, may I have a short recess with you please?

CHAIR WHITE: Yes. Recess at the call of the Chair.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:55 A.M., AND WAS RECONVENED AT 10:56 A.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBER VICTORINO, EXCUSED.)

CHAIR WHITE: This meeting will please come back to order. And, we'll move on.

Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair.

I MOVE TO AMEND BILL NO. 43 (2016), BY INSERTING THE LANGUAGE "AND OWNED BY THE APPLICANT", TO SECTION 19.65.030(O).

COUNCILMEMBER BAISA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, with a second from Ms. Baisa.

Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. Chair, the Amendment Summary Form outlines the changes in Bill 43, adding the "and owned by the applicant" language will discourage investors from speculating with long-term housing properties by purchasing and immediately converting them to short-term rental use.

The justification for the amendment is to curb speculation in housing. The ordinance prevents someone from building a new home with the intention of operating a short-term rental home right away. Homes must be at least five years old at the time of the application for a short-term rental home permit.

The unintended consequence of the ordinance has been to encourage investors to purchase older homes and then to immediately apply for a permit. Often these older homes are more affordable to our long-term residents. Investors buy existing properties, renovate them to standards that the tourists prefer, and then rent them out on a short-term basis.

The problem is especially bad in Hana, as I am hearing from our community. Requiring applicants to own a home for five years before they apply for a short-term rental permit should help discourage the speculation and keep the long-term housing that this County needs.

I respectfully ask for the Council's support for this motion, to add that five-year ownership restriction to the bill. And, I would note that the complaints have also come in from the rest of the island, although, Hana seems to be taking the brunt of these conversions. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And, of course, I was here when all of this began. And, this very idea of having people wait in order to do a short-term rental, or B&B, or whatever was discussed at that time. It was a concern then, and I think it still is, that we're afraid that people would come in and acquire new property, build something, especially for the short-term rental business. And so, this is why I'm supporting Member Carroll's amendment.

CHAIR WHITE: Thank you, Ms. Baisa.

Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. I would ask the Department or Mr. Hopper. I find it intriguing that the State Legislature dove into County's jurisdiction of property taxation that this Airbnb type of legislation, that now we're supposed to collect taxes on, tax on our behalf, submit to the County payment. Like with this type of bill and this type of amendment, I don't even know how the hell they're going to operate and get this data to make those collections to even give us a payment. So, are you folks aware of the impact of this State legislation on proposals such as this before the Council this morning?

If you not, you know, if you guys have no answer, I know, that would be appreciated too, but, you know, just let us know.

DEPUTY PLANNING DIRECTOR: Thank you, Chair. We did submit testimony during the legislative session on that bill. Our concern, and it was actually discussed also in Committee, that by facilitating the payment of taxes, operators can have the misimpression that they're now in compliance. And so, we had asked if language could be put in that bill, that these tax collects, tax collection agents that they're called now, would have some obligation to ensure compliance with local land use regulations.

We weren't successful in making that request, but we do still have that concern that because they get their GET and TAT licenses that they are, people feel that they're lawful.

It, the bill did contain language that the tax collection agent has to, something to the effect of notify these operators that they must be in compliance with local ordinances, and that they need to be aware that there are local ordinances. But, I don't know if there's any downside or penalty if they fail to do that.

We would though, we, we have seen some opportunities to try to work with the State Tax Office to get that information from them as an enforcement tool, because on the TAT license there's, one of the lines indicates the location of the operation. And, I believe Counties in the past have tried to get that information from the State Tax Office and they weren't able to. But, that's something we would like to pursue as an enforcement tool.

COUNCILMEMBER HOKAMA: Without kidding, why not take them to court and make this part of the conditions that we would ask? Because, I still believe that they have entered into our jurisdiction . . . We have the sole authority on real property tax. The State has no say what are you doing passing this type of legislation against us.

DEPUTY PLANNING DIRECTOR: I thought that the, it was just for collection of GET and TAT.

COUNCILMEMBER HOKAMA: Yea. Yup.

Well, my thing is it's still going to impact the use right? We talk about use of the property.

DEPUTY PLANNING DIRECTOR: Yes.

COUNCILMEMBER HOKAMA: And, that's where RPT gets it all, use.

DEPUTY PLANNING DIRECTOR: Absolutely, yes.

DEPUTY CORPORATION COUNSEL: Yes, and Mr. Chair, I think, as long as the County's retain their jurisdiction to zone property, which it, it still has merely because someone's paying their TAT taxes does not mean that they're, they're in compliance with County zoning laws. And, I think that's important if, if, you know, the State passes that fine, but it's, it's not going to affect the County's right to prohibit this type of use without, without a permit.

And, and that's, that's, that's important, I think, for anyone to know that if they're, if they're, if they're operating, that is just one issue of compliance and doesn't mean that you're in compliance with local zoning laws which are, which are under the authority of the County Council.

COUNCILMEMBER HOKAMA: You make a good point, Mr. Hopper.

My problem is, I don't want some of this property lessees or owners thinking that the Airbnb is an authorized representative of this County.

COUNCILMEMBER COUCH: Right.

COUNCILMEMBER HOKAMA: I mean, do we, do we consider them an officer representing us in this area? I don't think Mr. Wong is going agree to that.

Thank you, Chairman.

CHAIR WHITE: Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And, I understand Mr. Carroll's concern, and I echo his concern. The, the only thing, what this does is there's a pretty big blanket. What happens to somebody who has been operating with a permit legally, and decides to sell their home to somebody else who wants to continue that operation? They can't.

I'd like to ask the Department's thoughts on this amendment as well. Thank you.

CHAIR WHITE: Department.

DEPUTY PLANNING DIRECTOR: Thank you, Chair. This morning was a first that we saw this amendment, so I have not had a chance to talk with the Director or with staff, or with enforcement about it. I can't say that we have a strong opinion, cause on the one hand as Mr. Carroll advocated, like the, the five-year hold on new construction, this would have a similar deterrent for people buying houses on . . . for that use.

But, at the same time, we're also concerned with the scenario you just described. There are some properties that, realistically, are suited for vacation rental use in the resort areas. And, you do have a property that might change hands, and it would, there doesn't seem to a whole lot to be gained by banning that property from short-term rental use for five years when the new owner might want to come in lawfully for a permit.

I, I can see both sides, I'm sorry, we, we, I can't offer a strong position on the amendment right now, cause I haven't had a chance to discuss it with others in the Department.

CHAIR WHITE: Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And, you know, if this amendment doesn't pass, I'd be willing to bring it up, you know, as one of the higher priority items in, back in Committee when we discuss the bill again. Because, it is, I agree with Mr. Carroll, we have to stop that speculation. But, we also have the concern of, you know, places that already have the permit and then they want to sell it, then it goes back, especially, like Ms. McLean said. Especially the coastal areas in, in Kihei, Makena. Kapalua, I don't know if they have a lot of coastal single-family homes there but, certainly in Napili.

So, if this doesn't pass today, I, I'm committed to bring that back up, and we can figure out, I think we might be able to come up with some language that can help both ways. But, I can't think of it right now. It's just, some of it's coming through my head to, and I don't want to do it snap on the fly. I, I think it's something that we can come up with when we sit down with the Department and the attorneys, and figure out a way to, to have it both happen.

So, one way or the other we'll, we'll have to discuss that in Committee. Thank you.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, I appreciate Committee Chair Couch's comments. I thought it was covered under "I.", under "030". It states "A permit is not transferrable." So, if it's not transferrable, I mean, it's black and white right there.

And, the only exception we grant as I understand it is, upon a death, the permit can be transferred to an immediate family member. But other than that, it's non-transferrable. So, to me, you change owner, you start the clock all over again because it's not, you cannot transfer the time already served.

So, I think it's very clear, unless Mr. Hopper, Mr. Wong read the legislation differently. Thank you, Chair.

CHAIR WHITE: The Chair's concern with this is it's difficult to know what the implications are without doing some research. And, the thought occurs to the Chair that we may want to focus this on prospective purchases as opposed to having to own it for five years, because certain things have already happened.

I don't know whether we're limited to, well, I, I'm a little uncomfortable with this because it's, there's so many unknowns. I'm, you know, I'm comfortable with the concept as it applies to Hana. I'm, I'm not quite sure that we have enough data to know what the implications are to folks that may be in the process of applying. Are you, have any sense of?

DEPUTY PLANNING DIRECTOR: No, Chair. If I may respond to Councilmember Hokama's comment. He is correct that there is no transfer of permits in the, this kind of situation. If a house were to sell, the permit wouldn't transfer with it. The new owner could apply for a permit. And, under the proposed amendment, they have to wait five years to do that.

We'd be happy to, to work with the Planning Committee on, on addressing the problem and discussing other language if the amendment doesn't pass today. Or, if there is one particular area that's of primary concern, if it, if it were confined to that area, we, we would be able to administer that.

CHAIR WHITE: Okay, further discussion, Members?

Ms. Cochran, followed by Mr. Carroll.

COUNCILMEMBER COCHRAN: Thank you, Chair. And, I actually appreciate this amendment because it, I'm thinking it will help discourage the whole sole purchasing of a property in order to do short-term rental out of it. So, the concern Mr. Couch brought up, sounds like it's been addressed. And, then what you're saying, someone did purchase, it was an existing permitted use and the new owner would like to continue it, they'd come to you and more than likely it'd be, you know.

So, maybe in that sense, if it's existing, a existing permitted property, then they can be exempt or it doesn't apply to that type of language. And, then it's up to the new owner to pursue it or not, and they'll come in. So, this section wouldn't, you know, apply because it had already been vetted through, gone through the whole, you know, rigmarole of becoming a legally permitted property. So, something to that extent, I think, could be helpful in, you know, taking care of what Mr. Carroll is trying to do, and also trying to make it fair enough for a new owner, you know, not that that's what I want to see more of. But, you know, just to be fair that it had already gone through the motions to become legal. So, that's just my thoughts; to be more open and fair.

CHAIR WHITE: Yea, I think that would solve the problem with the large, you know, like the coastal properties. And, I'm not sure if, how we'd deal with that, but possibly adding to the end of the sentence "unless previously in STRH use, or permitted STRH use". Something of that sort.

COUNCILMEMBER COCHRAN: Yea.

CHAIR WHITE: Mr. Carroll.

COUNCILMEMBER COUCH: And, Mr.--

CHAIR WHITE: Actually, Mr. Carroll's next.

COUNCILMEMBER COUCH: Oh.

CHAIR WHITE: So, Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. I really appreciate the discussion. This is a problem that is not going away. It's already caused a lot of damage in our communities. I mean, it's there. I can take you to Hana. I can have somebody to take you to Haiku, show you all of the residences over there that we use to have our local people in that are now vacation rentals. Haiku, the same thing, all older homes that have been converted. So, it's a problem that needs to be addressed.

And, I want to thank Mr. Couch for his offer to make sure that this is heard if it doesn't pass the motion today.

And, in Hana School, they taught me how to do arithmetic, so I can see how the vote is looking like it's shaping up.

But, it's something that has to be done. Damage has been done already, and we really need to get a handle on this, hopefully sooner than later. Of course, since I had the motion, I hope it passes. Thank you, Chair.

CHAIR WHITE: Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, this is a tough one for me on this amendment. I, I will say though, if we are looking at trying to use this as one vehicle to address the affordable issues, then from a taxation standpoint or how we look at valuation, if we're going to allow the continued use of the STR, then what we're saying is residential property should be viewed as business commercial. Because, that's the value and that's what people are going to buy; not one residential unit.

But, if we're talking about affordable units for our people, then we got to look at this from a slightly different perspective in my opinion, Chairman. We're trying to make the adjustments in value so that our people can afford affordable housing. By continuing to allow the commercial business sector, factor into the residential side, you'll never get the affordable values down to where we need to, and then offer our people at the price they can buy.

You know, maybe my approach would be draconian, but all of this past permits tells people do it and come back later. Which means, I can't wait for my permits, so I'm going to do it now, and that's what you coming for. Maybe we should do away with that phrase "after the fact". Then it say, if you're caught, you have a penalty permit fee, and this is what it is, five times the regular permit, whatever it be.

But, my thing is if we want to talk about affordability, that we got to look about the, how we're going to look at sales and resales, and what is the values going to impact those transactions. Cause, if people going to buy for business, we're never going to hit the residential back to the place we need to, not at the HUD numbers anyway. Thank you, Chairman.

CHAIR WHITE: Mr. Guzman.

VICE-CHAIR GUZMAN: Thank you, Chair. I just want to state my position. I, I completely understand where Mr. Carroll is going with this and, and the intent.

I feel uncomfortable, like yourself, not having the full resources and information before me. So, at this time, I cannot support the amendment due to the fact that I just, I need more information. I need more collaboration from the Department.

And, they mentioned earlier in their position they were unclear as well. So, I would rather have a more definite position given by the Department. Thank you.

CHAIR WHITE: Any further discussion, Members?

Chair's going to take a brief recess at the call of the Chair.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:16 A.M., AND WAS RECONVENED AT 11:32 A.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBER VICTORINO, EXCUSED.)

CHAIR WHITE: This meeting of the County Council will come back to order.

Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. I appreciate the discussion.

AND, AT THIS TIME, I WOULD ASK THE CHAIR, I WOULD LIKE TO WITHDRAW MY MOTION.

CHAIR WHITE: Thank you, Mr. Carroll. Members, the, the Chair in discussion, or hearing the discussion felt that there is a significant interest in knowing what we're, knowing the implications of this vote before we take action on the proposed motion.

So, I reminded Mr. Carroll that I don't want to ever hear him complain about doing Committee work--

COUNCILMEMBER COUCH: Committee work.

CHAIR WHITE: --at Council again.

That said, the Chair is willing to take this up at the, at the next meeting after Mr. Couch, Mr. Carroll, and the Department, and Corp. Counsel have had a chance to look at the implications, and come back to us with a, a much more vetted recommendation.

So, Mr. Carroll has asked that he be able to make a motion at the next meeting. So, with that, I believe we come back to Mr. Couch who needs to postpone action on the.

COUNCILMEMBER COUCH: Not yet. We have to pass the bill.

CHAIR WHITE: Okay. Okay.

COUNCILMEMBER COUCH: The amendments. We don't pass the amendments? Okay.
All right. Ready to go.

CHAIR WHITE: Okay.

COUNCILMEMBER COUCH: Mr. Chair.

COUNCILMEMBER COCHRAN: Oh wait, sorry. Wait, Mr. Couch said we don't pass the amendments.

COUNCILMEMBER COUCH: We did pass the amendments.

CHAIR WHITE: No, the amendments, all the amendments that we passed will remain as passed.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: And so, we can't take action on this measure today anyway because of the changes. And, so we're leaving, we leaving the bill, basically, on the table until our next meeting.

COUNCILMEMBER COCHRAN: And, so it's not referring back to Committee though?

COUNCILMEMBER COUCH: No.

CHAIR WHITE: No, no, no, no.

COUNCILMEMBER COCHRAN: It stays here at full Council.

CHAIR WHITE: No, no. The Chair is not interested in referring it back to Committee. So, the actions taken today will remain as part of the bill.

COUNCILMEMBER COCHRAN: Okay.

COUNCILMEMBER COUCH:

MR. CHAIR, I MOVE TO POSTPONE ACTION ON THE MAIN
MOTION TO PASS BILL NO. 43 ON SECOND AND FINAL
READING, TO THE MEETING OF COUNCIL, OF THE
COUNCIL ON MAY 20, 2016, AT 9:00 A.M.

COUNCILMEMBER CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Mr. Couch, and a second from Mr. Carroll.

Mr. Couch.

COUNCILMEMBER COUCH: Mr. Chair, under the rules of, the Council Rule 19.C., a bill that is being considered for final reading that is amended at the Council meeting shall not be acted upon at the same meeting as the amendment. Final action shall be taken at the next feasible meeting. While there are exceptions to this rule, none appear to apply in this instance.

CHAIR WHITE: Any further discussion, Members?

Mr. Guzman.

VICE-CHAIR GUZMAN: Is Mr. Couch proposing to make another amendment at the next meeting? And, then we'll be in a circle.

CHAIR WHITE: Well--

COUNCILMEMBER COUCH: I'm not proposing any amendment.

VICE-CHAIR GUZMAN: Okay, okay.

CHAIR WHITE: Your, your stating of that brought up an interesting point, at the next feasible meeting. Our next meeting is on the budget. So, the question is, well, we have the budget, and then we have Planning Committee following the budget in the morning.

So, the question is, is the next feasible meeting, the meeting following the one at which we're discussing the budget?

CORPORATION COUNSEL PATRICK WONG: Yea, Chair, it's still your discretion of that.

CHAIR WHITE: Right. Right. I'm really asking if you guys want to try to do it on the same day that we do the budget, or just focus on the budget?

COUNCILMEMBER COUCH: It's going to be the second reading of the budget at the next, would be the, the following meeting, so.

CHAIR WHITE: Oh, that's true one way or the other.

COUNCILMEMBER COUCH: Same--

CHAIR WHITE: Okay. Okay, so we'll, anymore questions on the motion? All those in favor, please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, CARROLL,
COCHRAN, COUCH, CRIVELLO, HOKAMA,
VICE-CHAIR GUZMAN, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBER VICTORINO.

CHAIR WHITE: Measure passes with eight "ayes", zero "noes", and one "excused".

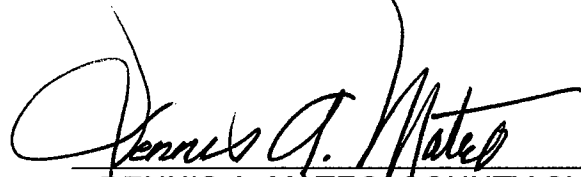
Mr. Clerk.

COUNTY CLERK: Mr. Chair, there is no further business before the Council.

CHAIR WHITE: Thank you very much, Members and staff. We are adjourned.

ADJOURNMENT

The regular meeting of May 6, 2016 was adjourned by the Chair at 11:36 a.m.



DENNIS A. MATEO, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

RECEIVED

Testimony for County Council meeting of May 6, 2016 2016 MAY -5 PM 1:53

Regarding Bill 43

I am Thomas Croly presenting testimony on behalf of the Maui Vacation Rental association on bill 43 today, the revise STRH ordinance. While this revised ordinance does not include all of the changes that MVRA advocated for, I believe that it significantly improves the existing ordinance and will allow dozens of stalled permit applications to proceed. Some of these folks have been waiting 3 years for these changes.

The change that has been made to allow individual condo unit owners the ability to get their own permits will address an ongoing issue at International Colony Club in Kaanapali where short term rental use for as long as 52 years, was technically made illegal in 1989. Should all of the 26 of the 44 condo unit owners who are currently taxed at hotel/resort based on their own declarations, make application and be granted their permits, this will have the net effect of reducing the total number of short term rental permits allowed in West Maui from 88 to 62. Something I would think Council member Cochran would approve of.

What I am most pleased about is that we now have an ordinance that is internally consistent and does not require that an applicant to lie in order to get a permit. With what will be codified in this ordinance is that someone, who might have previously operated, may make application for a permit provided that they confirm,

1. That they have stopped operating.
2. That for the period they previously operated, they showed proof of tax compliance
3. They pay a back permit fee as a result if this past operation
4. Confirm that they will not begin operating again until their permit is granted

If the applicant should lie in these declarations, or in any part of their application, then their application may be denied and they will be ineligible to apply again for 2 years.

We really need laws that are clear and that allow the public to be truthful in their applications. The "don't ask, don't tell" policies of the past may have been useful in helping us kick start the permitting of this use initially, but going forward I believe that it benefits everyone to have laws that are unambiguous and that offers a clear path to a permit without having to conceal past non-compliance.

As a separate issue, that is still awaiting council action is that of how our enforcement should be working. Enforcement needs to be concerned with eliminating the non-compliant activity. That could be from the violator voluntarily stopping the activity, which is a required step that we would codify today as a step in applying for a permit. Or it could be application of fines, and perhaps legal action, until the offender stops. But the enforcement process needs to be consistent and needs to be distinctly separate from that of the permitting process. I hope that when this is discussed in Planning Committee, an effective strategy can be developed that will lead to greater voluntary compliance. But one thing is certain, if the path to voluntary compliance does not include getting a permit, then you will have a much more difficult enforcement issue.

Public Testimony for County council regarding Bill 43

Submitted on behalf of the Maui Vacation Rental association

Reprinted below is a portion of the minutes from the Maui Planning Commission meeting of May 13, 2014. At this meeting the Planning Department offered an amendment to chapter 19.65.080 D, the enforcement section of the Short term rental ordinance, intended to **"clarify"** the intent of the provision in the ordinance that would apply a 5 year ban **only after a Notice of Violation** was issued and all appeals were exhausted and to ensure **due process** to all applicants.

The amendment adopted by this Council on April 15, 2016 at first reading of the revised STRH ordinance essentially codified this change, that as shown in the minutes below was recommended by the department and that the commission voted to recommend approval of to the County Council at their meeting of May 13, 2014.

C. PUBLIC HEARINGS (Action to be taken after each public hearing.)

1. MR. WILLIAM SPENCE, Planning Director, transmitting a proposed bill amending Section 19.65.080.D of the Short-Term Rental Home ordinance in the Maui County Code concerning Enforcement to be consistent with the Maui County Code Enforcement provisions in Section 19.530 and **to ensure appropriate due process.** (J. Alueta)

Mr. Alueta: Good morning, Commissioners. I'm Joe Alueta. I'm the Administrative Planning...(inaudible)...As I've stated before for some of you new Commissioners, I pretty much handle any amendments to Title 19 as well as your own rules including SMA and your rules with Special Use Permits and all that. And there's two way in which the Maui County Code or Title 19 can be amended with regards to zoning. That is either by resolution coming by down from the Council or one initiated by the Administration. In this case, this proposed amendment is being done by the Director, by the Administration.

As indicated by the Director it's a relatively simple amendment. **It just clarifies how a certain portion of the Short-Term Rental Bill will be operated previously operating or is alleged to be operating a short-term rental home,** they would be prohibited from applying for five years from submitting an application. Right now it just says if they're operating we give them a...fine them or note that they are operating then that would be enough evidence. **This allows for a process which is already established which is under 19.530 in the enforcement provision in which we would have to go through...you know, you go through a Notice of Warning, and if they continue and once we find out they are doing it, and through the evidence then you go through a violation process in which we issue a Notice of Violation. After that period, the person who receives a Notice of Violation can appeal that and go through a process. And it's basically due process for someone being accused of it rather than just saying, hey we think you're doing it, now**

you're banned for five years. This establishes or clarifies a due process under 19.530 in which everyone is entitled to have. And so that's pretty much what we're trying to do is just clarify. We think that's what the Council intended to be with, and that's pretty much how we would operate.

Again, in my report I did raise some concern that you know, from the Staff this could encourage people not to apply. I think that's highly unlikely for two reasons. One there is a limited number of short-term rental permits for those who wanna get established as a Short-Term Rental Permit will need to apply before that cap is reached. Secondly, I don't know how many of you are business owners, but if you establish a business, once you get going and you're all of a sudden forced down, meaning you would have to cancel reservations for people, you would lose a lot of clientele even if you did get a warning, you then shut down and then you came in and applied, you would have to cancel reservations. There would be a lot of pissed off people. The internet today is fast and furious. Once you establish a bad reputation, it is very hard to reestablish that. So I think that that would, that's another discouragement toward those who wanna illegal...just wait around and wait for them to get caught before they come in for a permit. Again, we're just wanted to clarify this. We felt that this is an important amendment in the sense that it clarifies and establishes due process for everyone, and hopefully you're supportive of it. If you have any questions, I'm...feel free to answer them as best I can.

Mr. Alueta: The Department is recommending approval of the proposed bill with the amendments. One, we would include as evidence, complaints by neighbors. And then secondly, we would work with Corporation Counsel to essentially add on the paragraph regarding violations at the section that says, "and the violations are not overturned and all appeals are exhausted". Something to that effect in which time the five-year ban would start from that. Just a comment on that real quick is that in the discussion between Commissioner Hedani and Corporation Counsel is that, if someone did appeal they would be...and they basically had no shot at winning, they would essentially be extending their period in which they could not file for an application. So they would...if they are...(inaudible)...guilty then they would be better off taking their medicine and just waiting the five- years out. Otherwise, they would have to...if they kept appealing and appealing and stretching that period out we wouldn't...while someone has a Notice of Violation as on appeal, we wouldn't process their application.

Mr. Hopper: I would...so you wouldn't...I mean, the thing is that I guess Commissioner Hedani is technically correct that if you have the NOV issued you're not banned from applying. It's just you've got very little chance of getting approved because the Department can probably recommend denial and the Commission would be advised that the person's got an active violation before them. But technically they could still apply.

Mr. Alueta: Right.

Mr. Hopper: Is that right?

Mr. Alueta: Yeah.

Mr. Hopper: I mean, if the Commission wants to say the ban begins from the date that Notice of Violation is issued, you could do that. So you're just...just clarity I think is important, frankly.

Chairperson Lay: Commissioners, motion?

Mr. Hedani: Move to approve as recommended by the Department.

Chairperson Lay: Motion by, motion by Commissioner Hedani, seconded by Commissioner Freitas. Any discussion on the motion? Seeing none, oh Commissioner Hedani?

Mr. Hedani: Joe, you know on your enforcement section, yeah, this is the last underscored paragraph. It begins with, "if the County issues a Notice of Violation," the comment that I had was I guess they'll be prohibited from applying for a permit for five years. But the comment that I had was can this...can that enforcement action be extended to the effect that any other properties operated by that operator of the short-term rental unit are also affected? In other words, put some real teeth into it that says if you're an operator of short-term rental homes and you're operating three for three different owners or five different owners, all of your operations are jeopardized if you allow an unpermitted person to operate under your name.

Mr. Alueta: Well, I guess this only deals with whether or not someone's operating prior to applying for the permit, not after, not after. So that's what this section is dealing with. This deals with...this provision was put in by the County Council to encourage people to come in and apply not dilly dally like they did with the B&B Permits.

Chairperson Lay: Director?

Mr. Alueta: So that's, so that's kinda where it was coming from. And so this would prohibit anyone from applying for five years whether it be the property owner, the violating owner or the violating operator. So that, but if they were already granted a permit then this section would not apply to them.

Chairperson Lay: Director, wish to comment?

Mr. Spence: Within a, hopefully not too distant future we're going to be bringing to the Commission a review of the short-term rental code, that whole section, and we're gonna have proposed modifications to areas where there are more...where an owner has more than one short-term rental permit...(inaudible)...

Chairperson Lay: Corp. Counsel?

Mr. Hopper: I'll also note, I mean it does say you can't accept an application from the subject property from the violating owners or from the violating operators. So that would seem to include other properties that the same violating owner or the violating operator would be operating. It says that here, so...

Mr. Alueta: Right. But that's only for, again, for accepting of an application. It doesn't necessarily mean if they already have the permit granted. This was intended for people coming in—

Mr. Hopper: You've got other provisions that deal with rescinding applications and things like that which are in separate sections, that's correct.

Mr. Alueta: That is correct. Thank you.

Mr. Hedani: Are you comfortable with this as it's written, Joe?

Mr. Alueta: **Yeah, I think the Administration is pretty comfortable with...it clarifies it, it doesn't...it just clarifies it and I think everybody wants to have clarity. We have a pretty good enforcement provision and the process is outlined and I think that's the intent is that let's have a clear process in which violators are noticed.** I mean, again in the back of the planner's head is always that...are people gonna be encouraged to wait till they get a Notice of Warning before they apply? But I think you know from a business standpoint, one, they risk the fact that again, the caps are gonna be met, and two, the damage to their reputation on the thing, so I think the Administration from that aspect is ...

Chairperson Lay: Commissioners, any more discussion? Seeing none, can we get the Director to repeat the motion?

Mr. Spence: The motion is to recommend to the County Council approval as recommended by Staff.

Chairperson Lay: Call for the vote. All those in favor? Mr. Spence: That's five ayes.
Chairperson Lay: Motion carries.

Mr. Alueta: Thank you very much, Commission.

It was moved by Mr. Hedani, seconded by Mr. Freitas,

VOTED: To Approve the Proposed Bill Amending Section 19.65.080.D of the Short-Term Rental Home Ordinance as Recommended by the Department.
(Assenting - W. Hedani, J. Freitas, J. Medeiros, P. Wakida, R. Higashi)
(Excused - K. Ball, S. Duvauchelle, M. Tsai)

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DAVID DANTES, M.D.

4320 Une Place
Haiku, HI 96708
Telephone (808) 573-0066 FAX (808) 573-2217

2016 MAY -5 PM 1: 53

OFFICE OF THE
COUNTY CLERK

May 4, 2016

The Honorable Mike White
Council Chair
County of Maui
Wailuku, HI 96793

Aloha Chair White and Council Members:

Please accept this letter as written testimony pertaining to Bill No. 43 (2016):
"A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING
ORDINANCE RELATING TO SHORT-TERM RENTAL HOMES" which is on the
agenda for the May 6, 2016 Council meeting.

As you are aware, the question of a 5-year ban on STR permit applications for documented violators has been discussed several times in Planning Committee, under item PC-10. After public testimony, input from Corporation Counsel and the Planning Department, the Planning Committee arrived at a compromise, wherein a violator would be exempted from the ban if he or she demonstrated compliance with GET and TAT, and paid an appropriate amount of property tax retroactively during a six-month grace period. The Planning Committee adopted this approach because it provided an opportunity for all but the most egregious violators to "make things right" and move forward in compliance.

Then, unexpectedly, during its April 15th meeting the Council voted narrowly to amend the ban provision by requiring that an operator receive a Notice of Violation before a 5-year ban could be imposed. Specifically, the amendment is shown in underlined text as follows:

19.65.080[D.] E. ...Operating without a permit shall result in a property owner **who has received a Notice of Violation** being ineligible to apply for a permit for five years...

This amendment was initiated by Planning Committee Chair Don Couch, and his statement in support of it can be viewed online at http://mauicounty.granicus.com/MediaPlayer.php?view_id=1&clip_id=139 by scrolling to two hours and twenty-seven minutes (2:27) into the video clip. Member Couch told the Council that the motion was necessary because, without a Notice of Violation, a violator would be deprived of due process regarding the imposition of a 5-year ban.

Quoting from member Couch's statement to the Council: "There is a concern that people need some sort of due process. A Notice of Warning doesn't appear to give them due process. Something needs to be in writing for them to be banned. They can't just be banned for five years without getting any kind of notice."

Unfortunately, while this argument persuaded a majority of members to support the amendment, it was not factually accurate.

Here are the relevant facts. The 5-year ban would be imposed, either as part of a Notice of Warning, or else in a letter from the Current Planning Division, in case a permit applicant was found to have operated illegally. **In either case, the violator would receive a formal letter, advising them that a ban has been imposed. This amounts to an order by the Planning Director. An order of the Planning Director, imposing a ban on applying for an STR permit, is subject to the right of appeal, regardless of whether a Notice of Warning or Notice of Violation has been issued.**

Please refer to

<http://www.co.maui.hi.us/172/Board-of-Variances-Appeals> where you will find an overview of the Board of Variances and Appeals, which:

"Hears and determines appeals alleging error from any person aggrieved by a decision or order of any department charged with the enforcement of zoning, subdivision and building ordinances."

Aside from formal appeal to the BVA, an operator who is subjected to the ban may petition the Department, itself, for reconsideration. According to Deputy Director McLean, at the Dec. 3, 2015 Planning Committee meeting:

"...And so if they can prove to our satisfaction that they haven't been advertising or operating, then that's the end of it and they can apply if they want to."

Therefore, there is due process – both informally and formally -- for persons who become subject to the ban. In light of the fact that an amendment was passed, on April 15, based on factual ***mis***-information about "lack of due process", I respectfully request that those members who voted for the amendment reconsider their vote during the second reading of the ordinance.

I recognize that a favorable reconsideration would cause the bill to be a "first reading" again, which would require one more second reading. Although this recommended action poses an inconvenience, that pales in comparison to the unintended consequences of allowing the April 15 amendment to stay in effect.

The unintended consequences of member Couch's misguided amendment are serious, and I believe contrary to the public interest. The Department's only pro-active

deterrent against illegal STR operations has now been conditioned on a costly and time-consuming process of first issuing a Notice of Violation. Given the Department's resource allocation issues, this will open the door for violators to proliferate and flourish. There will be essentially no incentive to apply for a permit, because there will be no consequences for getting caught in a violation. Illegal operators will simply operate unless, and until they are detected, and issued a Notice of Warning. Then they can simply apply for a permit, like any law-abiding operator. They may need to pay some back taxes, and a retroactive permit fee, but that's just the cost of doing business illegally.

In conclusion, the Planning Committee held eleven meetings over the course of more than a year, and arrived at an effective, and humane compromise regarding the 5-year ban. The last-minute amendment on April 15 was approved on the basis of member Couch's factual misstatements about due process, and should be reversed on second reading of the ordinance.

Respectfully,

A handwritten signature in black ink that reads "David Dantes, M.D." The signature is written in a cursive, slightly slanted style.

David Dantes, M.D.

County Clerk

From: Maui Lana <lanaperry@gmail.com>
Sent: Thursday, May 05, 2016 11:33 AM
To: County Clerk
Subject: Vacation rentals

Sent from my iPad
Dear County Counsel,

Please remove "who has been issued a notice of violation"
From the purposed bill on short term rentals. Please return to the Purposed wording as put forth originally by the
planning committee That does not include "who has been issued a notice of violation".
Thus would include all illegal short term rentals not just the ones that have been caught and issued notice by county
officials.

Sincerely,
Lana Perry

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County Clerk

From: Susan Vickery <svickery@hawaii.rr.com>
Sent: Thursday, May 05, 2016 10:28 AM
To: County Clerk
Subject: Short-Term Rental

Dear Council Members,

County of Maui has a housing crisis that I'm sure you are aware of. It is only getting worse as more foreclosures are taking place, illegal short-term rentals hike up the market rents for those of us who live here full-time, and it affects the housing market for single family residents and condominiums.

Illegal short term rentals are literally STEALING HOMES FROM OUR LOCAL POPULATION. The Homeless Shelters, low income housing are to the maximum capacity and one to four year waiting lists for those who qualify. It affects every aspect of our housing population.

Please do the right thing and ENFORCE the rules or make more stringent rules so the County of Maui residents all have a fair chance of living with some stability and dignity for the keiki & families!

I've contributed to Maui for 30 years and have paid my taxes & given back to Mother Maui. And I am not leaving anytime soon. Homeless Shelter is looking better all the time, to avoid living on the street like so many across these Hawaiian Islands.

Mahalo nui,

Susan Vickery
3579 Pahala St.
Makawao, HI 96768
(808) 495-6410

Sent from Mail for Windows 10

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County Clerk

From: Arik Salvador <ariksalvador@hotmail.com>
Sent: Thursday, May 05, 2016 3:48 PM
To: County Clerk
Subject: For County Council meeting scheduled May 6, 2016

Dear Council Members,

I am respectfully writing to you to ask if you can place the affordable accessory dwelling bill on the schedule for approval. My understanding is that it has received unanimous support. We have been awaiting the official passing of the bill so that we may submit building permits for an ohana that will be allowable under the new ordinance.

Mahalo,
Arik Salvador

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COUNTY CLERK

County Clerk

From: Amber Lee <lee.amber.m@gmail.com>
Sent: Thursday, May 05, 2016 3:54 PM
To: County Clerk
Subject: Council meeting 4/06/2016 Written Testimony

Dear Council members,

I am writing this testimony to ask your consideration in scheduling the affordable accessory dwelling bill for approval. We would like to build an affordable Ohana on our property that is directly awaiting the approval of this bill.

Thank you,
Amber Lee

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Reply all | Delete Junk |

Illegal short term rentals

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2016 MAY -6 AM 7: 41

TP

Tamara Paltin <tampaltin@gmail.com>

Thu 8:49 PM

County Clerk; Elle Cochran; Riki Hokama; Don Couch; Donald S. Guzman; +5 more

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Reply all |

Testimony

Aloha Council,

Please REMOVE the "who has been issued a notice of violation" text from this bill. ALL illegal short term renters should be banned from applying for a license for 5 years."

Proof of illegal operation is enough for a ban to be put on the illegal operator. Proof includes "advertising, guest testimony, online reviews, rental agreements, receipts....."

It's my understanding that this council does not want to expand positions or the cost of government. With the wording as is, in order for a ban to be placed on an illegal renter, the planning department and corporation counsel have to inspect and send a notice to the illegal property, adding another level of bureaucracy to the process. The bottom line is this: the planning department and corporation counsel are already understaffed, and that is one of the major contributing factors to the explosion of illegal short term rentals.

Illegal short term rentals are not only STEALING HOMES FROM OUR LOCAL POPULATION in the midst of a full blown housing crisis, they are thumbing their noses at legal operators; we should not be going easy on illegal operators, we should be holding them responsible for their role in this problem that affects our quality of life.

There are already two methods of due process in place:

- 1) The property owner receiving the ban may provide the information to the Department showing that they were not operating a short-term rental. If that information is provided then the Department retracts the ban. There have been cases where advertising exists with an incorrect address (perhaps the violator in that case was trying to hide the real location) or an outdated ad from a previous owner who did have a permit and the department immediately retracts the ban; OR
- 2) Appeal to the Board of Variances and Appeals.

Both of these methods of "due process" are the same that are in effect for the Notice of Violation process.

Illegal rentals on the top tier of homes drive up rents on ALL levels of homes. Aikea just did a study of AirBNB effects on rents and found that in San Francisco, AirBNB drove up the price of a one bedroom apartment unit by \$912 a year.

As elected officials I believe our representatives job is to ensure the quality of life for our residents first and foremost so the other point I'd like to make is full time residents of Maui who apply for a short term rental permit should be given priority over an off island speculator we are an isolated island and resident quality of life is deteriorating we should take care of our residents first and build our local economy.

Sent from my iPhone

Jim Smith
99 Kapuai Road
Haiku, Maui, Hawaii 96708

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May 6, 2016

OFFICE OF THE
COUNTY CLERK

Chairperson Michael White and
Members of the Maui County Council
200 S. High Street
Wailuku, Maui, Hawaii 96732

TESTIMONY: Related to County Communication 16-85

Dear Chairperson White and Members of the Council,

The Communication referenced above seeks for deliberation upon a perception that our charter has a problem. The relevant part of our planning process is defined at Article 8-8.5.4 It establishes the structure of governance as applied to community plans and their revision.

The request does not appear to provide any reason other than the length of time for the process to run its course for Council intervention. It may embroil this Council in a rhetorical exercise, or a more substantive consideration. My first thought is it should be filed. But, it is important to defer to a member's concern as expressed in this communication. If this is your decision, I respectfully request that the Communication be transmitted to the Policy and Intergovernmental Affairs Committee as it relates to structure and the Committee may soon receive a report from the Special Committee on County Governance implicating our Charter.

Thank you

signed: Jim Smith
Dated: 05_05_16

Reply all | Delete Junk |

Testimony for May 6 Bill 43

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2016 MAY -6 AM 7:42

RU

Rene Umberger <octopus@maui.net>

Thu 7:15 PM

County Clerk

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COUNTY CLERK

Reply all |

Aloha Chair and Council Members,

I am writing to urge you to keep the planning committees original language and remove the language requiring a notice of violation for an illegal short term rental before the 5 year ban on applying for a permit is implemented.

The rental shortage is a community crisis, caused in part by illegal and legal short term rentals in our residential areas. As a Kihei homeowner with a rental unit, last year for the first time in nearly 20 years of renting to long term renters only, people offered us hundreds of dollars more/month than we were asking -- they were that desperate. Also for the first time, one person cried when I told them we had selected someone else. It was heartbreaking.

The people who are the backbone of our community can't find places to live.

Please take the strongest possible action to end the illegal rentals -- which surround my So. Kihei home and every neighborhood on the island -- and provide some relief for Maui's renters.

Mahalo,

Rene Umberger

Sent from my iPad

"Joy to the fishes in the deep blue sea. 🐠 Joy to you and me...🎵"



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Eric Gill, Financial Secretary-Treasurer

Hernando Ramos Tan, President

2016 MAY -6 AM 7:42
Godfrey Maeshiro, Senior Vice-President

Thursday, May 5, 2016

OFFICE OF THE
COUNTY CLERK

The Honorable Mike White, Chair
and Members
Maui County Council

TESTIMONY submitted on behalf of UNITE HERE! Local 5
Re: Bill 43; RELATING TO SHORT-TERM RENTAL HOMES"

Chair White and Members:

UNITE HERE Local 5 is a local labor organization representing 11,000 hotel, health care and food service workers employed throughout our State. Thank you for allowing us to submit the following comments on Bill 43.

Since Bill 43 would allow Transient Vacation Rentals, Short-Term Rental Homes and Bed & Breakfasts in A-1 and A-2 areas, it will be crucial that there remain strict numerical caps on the number of each type of lodging allowed in each community. It will also be crucial that enforcement agencies have the power to take meaningful, swift action to prevent the impacts of illegal rentals on our neighborhoods.

There are many good aspects of this bill, such as the move to mirror the criteria for revocation with those for non-renewal of short-term rental home permits. It is key that advertisements and guest comments can be used as evidence of short-term rental home operation.

The bill would change the law such that that if someone is found operating without a permit, they can only be penalized by a five-year permit ineligibility period if they have been issued a notice of violation. We believe this is unnecessary and makes enforcement more difficult than it needs to be.

Thank you.